

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

4683 HJUD HB 198 - HB 223

255

injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.



CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

LAW DEPARTMENT (907) 586-5242

February 15, 1985

The Honorable Mike Miller
Chairman of House Judiciary Committee
House of Representatives
Alaska State Legislature

Dear Chairman and Members of the Committee:

The City and Borough of Juneau, Alaska supports the adoption of House Bill Number 97. This legislation will be a boost to the creativity and the availability of recreational programs while still protecting the fundamental interests of the participants in those programs. We understand that this bill has been based on California legislation that has so far been successful, and we suggest the following modifications as further improvement:

(1) The bill does not protect municipalities against claims based on hazardous recreational activities for which a "specific fee" has been paid. If such fees amount to profits being realized by municipalities, it is reasonable to task them with liability, but that purpose could be better realized by refining the definition of "specific fee" contained at page 4, line 11 of the bill. Since it often happens that fees are paid to community organizations using municipal facilities, and sometimes paid to municipalities on behalf of such organizations, the definition should reflect these arrangements. In addition, reference in the definition to "administrative" fees seems an invitation to litigation. Is a fee paid for the purchase of balls and bats to be used in the program an administrative fee? We suggest a definition something like the following:

(3) "Specific Fee" does not include a fee or consideration charged by a municipality for a general purpose such as a general park admission charge, a vehicle entry or parking fee, a group use application or permit fee, or any fee reasonably necessary for the support of the recreational program involving the hazardous recreational activity. Fees paid in trust to a municipality for the benefit of a private organization organizing, sponsoring, or conducting the hazardous recreational activity shall not be considered paid to the municipality.

(2) Our recreation department often conducts hikes, skiing trips, and other recreational activities on state and federal property. We suggest that the exemption set out on page 5, line 16 of the bill be amended to read:

(6) Is an action for property damage or personal injury arising of the person's participation in a hazardous recreational activity conducted by a municipality or on property owned or leased by the municipality.

(3) We suggest that model airplane flying, gymnastics, outdoor ice skating, hockey, and field sports be included in the definition of "hazardous recreational activity." These popular activities, especially gymnastics, present significant opportunities for liability.

(4) The definition of "participation in a hazardous recreational activity" contained at page 4, line 3 of the bill does not directly address the case of a participant waiting his or her turn or participating in a nearby event. We suggest that the definition be amended to read:

(2) "Participation in a hazardous recreational activity" includes assisting another to participate in the activity and being present at the site of the activity as a spectator or a participant not directly involved in the activity in question who.

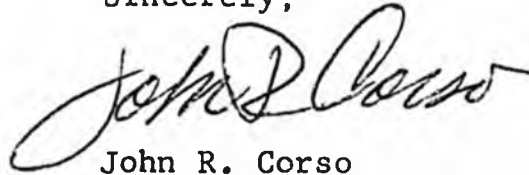
(5) The bill, at page 6, line 22 leaves liable any municipality which "promotes" a hazardous recreational activity. If the purpose of this provision is to discourage hazardous recreational activities, the present wording should be retained. If, however, the purpose is to discourage municipalities from misrepresenting the nature of hazardous recreational activities, then we suggest this provision be amended to provide:

(4) Damage or injury suffered in a case in which a municipality or an agent, officer, or employee of a municipality recklessly or with gross negligence promoted as safe the participation in a hazardous recreational activity; for purposes of this paragraph, promotional literature or a public announcement or advertisement that merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion; or

The Honorable Mike Miller
February 15, 1985
Page 3

Mr. Jim Hall, director of our parks and recreation department, and I will be in attendance at today's hearing if there is any way we can assist the committee.

Sincerely,

A handwritten signature in cursive script that reads "John R. Corso". The signature is written in dark ink and is positioned above the typed name.

John R. Corso
Assistant City-Borough Attorney

JRC/mjm

H B

203



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

DATE: March 28, 1987
TO: House Judiciary Committee
FROM: Representative Ron Larson
SUBJ: Analysis of House Bill No. 203

General Analysis:

HB 203 would authorize the court to order the forfeiture to the state of a deadly weapon used or possessed by a defendant during the commission of a crime. Forfeiture would not be required by the bill, but could be imposed at the court's discretion.

Currently, forfeiture of weapons is authorized for offenses dealing only with fish and game or controlled substances. There is statutory silence regarding weapons used in all other crimes, including murder, robbery, or assault.

Section by Section Analysis:

Section 1 of the bill amends existing law at AS 12.36, Disposition of Recovered or Seized Property, by adding two new sections to the chapter.

Sec. 12.36.050(a) adds a procedure for the actual return of the weapon or the return in partial value of the claimant's interest in a weapon ordered forfeited under AS 12.55.015. The claimant of the weapon is required to prove three things: That he or she (1) has a valid interest in the weapon, acquired in good faith; (2) did not knowingly participate in the commission of the crime in which the weapon was used; and (3) did not know or have reasonable cause to believe that the weapon was used or would be used to commit a crime.

Sec. 12.36.050(b) directs the court to make the return in one of the two options specified if the claimant is entitled to relief.

Sec. 12.36.060 provides instructions for the Commissioner of Public Safety as to the disposition of weapons not returnable to a claimant.

Section 2 of the bill amends AS 12.55.015(a). Apart from some technical improvements in the law, the substantive change occurs by the addition of Sec. 12.55.015(a)(9), which would allow the court to "order the forfeiture to the commissioner of public safety of a deadly weapon possessed or used by the defendant during the commission of a crime described in AS 11.41, AS 11.56, or AS 11.61.

Section 3 of the bill adds a definition of "deadly weapon"; the definition used is that in criminal code at AS 11.81.900(13) (i.e., "any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive").

The bill does not have an affirmative effective date. Accordingly, it takes effect 90 days after enactment.

STATE OF ALASKA THE LEGISLATURE

FOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	5-4-87	1:30 p.m.
H. JUD.	4-24-87	1:30 p.m.

HOUSE COMMITTEE REPORT

7)
Date referred: 3/23/87

FURTHER REFERRALS: Finance

DATE: 5-4-87

The Judiciary Committee has considered HB 203

An Act relating to forfeiture of weapons used to commit a crime."

COMMENTS:

- replace with (S HB 203 (Jud)) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

NOTES: _____ letter of intent

TACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Handwritten Signature]

Chairman's signature

*John - the bill needs notice provisions.
Auto used in ADW. Bank lienholder?*

*Other personal property which might be covered
by a VCC financing statement,*

BY LARSON, SWACKHAMER,
KOPONEN AND TAYLOR

1 IN THE HOUSE

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

2
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4
5
6 For an Act entitled: "An Act relating to forfeiture of weapons used to
7 commit a crime."

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

9 * Section 1. AS 12.36 is amended by adding new sections to read:

10 Sec. 12.36.050. REMISSION OF FORFEITED PROPERTY. (a) A claim-
11 ant seeking remission of, or remittance of the value of, the claim-
12 ant's interest in a weapon ordered forfeited under AS 12.55.015 shall
13 prove to the court by a preponderance of evidence that the claimant

14 (1) has a valid interest in the weapon, acquired in good
15 faith;

16 (2) did not knowingly participate in the commission of the
17 crime in which the weapon was used; and

18 (3) did not know or have reasonable cause to believe that
19 the weapon was used or would be used to commit a crime.

20 (b) Upon a showing that a claimant is entitled to relief under
21 (a) of this section, the court shall order that the claimant receive

22 (1) the weapon within 60 days after the final disposition
23 of the case; or

24 (2) if the claimant is entitled to remittance of less than
25 the total value of the weapon, either the value of the claimant's
26 interest or, upon payment by the claimant of the difference in value,
27 the weapon.

28 Sec. 12.36.060. DISPOSAL OF FORFEITED DEADLY WEAPONS. (a) A
29 deadly weapon forfeited under AS 12.55.015, unless remitted under

*11.81.900
Lienholders*

1 the commission of an offense described in AS 11.41, AS 11.56, or
2 AS 11.61.

3 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

4 (f) In this section "deadly weapon" has the meaning given in
5 AS 11.81.900.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

*John - the bill needs notice provisions.
Auto used in ADW. Bank lienholder?
Other personal property which might be covered
by a UCC financing statement.*

1 IN THE HOUSE
2
3

BY LARSON, SWACKHAMMER,
KOPONEN AND TAYLOR

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

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*11.81.900
Lienholders*

1 AS 12.36.050, shall be disposed of by the commissioner of public
2 safety under this section. The commissioner of public safety may
3 dispose of each weapon suitable for sporting purposes by public
4 auction. A weapon suitable for law enforcement purposes, ballistics
5 testing, or training may be retained by the Department of Public
6 Safety. A weapon that is unsafe or unlawful shall be destroyed.

7 (b) The commissioner of public safety may adopt regulations
8 necessary to carry out the provisions of this section.

9 * Sec. 2. AS 12.55.015(a) is amended to read:

10 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
11 imposing sentence on a defendant convicted of an offense, may singly
12 or in combination

13 (1) impose a fine when authorized by law and as provided in
14 AS 12.55.035;

15 (2) order the defendant to be placed on probation under
16 conditions specified by the court that [WHICH] may include provision
17 for active supervision;

18 (3) impose a definite term of periodic imprisonment;

19 (4) impose a definite term of continuous imprisonment;

20 (5) order the defendant to make restitution under [AS
21 PROVIDED IN] AS 12.55.045;

22 (6) order the defendant to carry out a continuous or peri-
23 odic program of community work under [AS PROVIDED IN] AS 12.55.055;

24 (7) suspend execution of all or a portion of the sentence
25 imposed under [AS PROVIDED IN] AS 12.55.080;

26 (8) suspend imposition of sentence under [AS PROVIDED IN]
27 AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon possessed or used by the defendant during

1 the commission of an offense described in AS 11.41, AS 11.56, or
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3 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

4 (f) In this section "deadly weapon" has the meaning given in
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1 IN THE HOUSE

BY LARSON, SWACKHAMMER,
KOPONEN AND TAYLOR

2

HOUSE BILL NO. 203

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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16 conditions specified by the court that [WHICH] may include provision
17 for active supervision;

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25 imposed under [AS PROVIDED IN] AS 12.55.080;

26 (8) suspend imposition of sentence under [AS PROVIDED IN]
27 AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public
29 safety of a deadly weapon possessed or used by the defendant during

1 the commission of an offense described in AS 11.41, AS 11.56, or
2 AS 11.61.

3 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

4 (f) In this section "deadly weapon" has the meaning given in
5 AS 11.81.900.

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

DATE: May 4, 1987
TO: Members of the House Judiciary Committee
FROM: Max F. Gruenberg, Jr. *MFG*
RE: Changes made in proposed CSHB 203 (Judiciary)

At the request of the sponsor, the Department of Law, the Court System, the Department of Public Safety and the municipalities, I have made some changes to HB 203.

Sec. 12.36.050(b) has been amended to provide the court system with more discretion as to when and how weapons forfeited will be remitted. The remission language is no longer mandatory. The court now has the option to either remit the weapon itself or the value of the claimant's interest.

Sec. 12.36.050(c) was added to place a limitation of one year to claim a weapon forfeited under this section. These changes were made in order to address court system concerns regarding the original remission language.

Sec. 12.36.060(a) was amended to allow the Department of Public Safety to dispose the weapons by turning them over to the Department of Administration which normally handles surplus state equipment. The Department of Public Safety is also now allowed to retain weapons for "identification" i.e. display purposes.

Subsection (a) has also been amended to allow arresting local law enforcement agencies to receive forfeited weapons from the Commissioner of Public Safety.

Sec. 12.55.015(a)(9) has been amended by limiting weapons subject to forfeiture to those used by or in the "actual possession" of the defendant during the commission of a crime. This change excludes forfeiture of weapons which were neither used in the commission of the crime or on the defendant's person or within his or her immediate control during the commission of the crime.

A M E N D M E N T

Offered in the House

By Gruenberg

TO: CS for HB 203(JUD)

Page 1, line 12, following "AS.12.55.015": Insert "(a)(9)"

Comment: The court system feels that this change is needed to make it clear that the new remission procedure applies only to weapons forfeited as part of a sentence rather than those forfeited as a condition of probation, etc.

5-0692B/
Bradley
5/2/87

Original sponsors: By Larson, Swackhammer,
Koponen and Taylor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 203 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forfeiture of weapons used to
7 commit a crime."

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

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11 ant seeking remission of, or remittance of the value of, the claim-
12 ant's interest in a weapon ordered forfeited under AS 12.55.015 shall
13 prove to the court by a preponderance of evidence that the claimant

14 (1) has a valid interest in the weapon, acquired in good
15 faith;

16 (2) did not knowingly participate in the commission of the
17 crime in which the weapon was used; and

18 (3) did not know or have reasonable cause to believe that
19 the weapon was used or would be used to commit a crime.

20 (b) Upon a showing that a claimant is entitled to relief under
21 (a) of this section, the court may order that the claimant receive an
22 amount equal to the value of the claimant's interest in the weapon or
23 the court may order that the weapon be released to the claimant.

24 (c) A claim may not be filed under this section more than one
5 year after the entry of the last final judgment in the case in which
6 the weapon was ordered forfeited.

7 Sec. 12.36.060. DISPOSAL OF FORFEITED DEADLY WEAPONS. (a) A
8 deadly weapon forfeited under AS 12.55.015, unless remitted under
9 AS 12.36.050, shall be disposed of by the commissioner of public

1 safety under this section. The commissioner of public safety may
2 declare a weapon surplus and transfer it to the commissioner of admin-
3 istration. A weapon suitable for law enforcement purposes, ballistics
4 testing, training, or identification may be retained by the Department
5 of Public Safety or transferred to the municipal law enforcement
6 agency making the arrest that led to the forfeiture. A weapon that is
7 unsafe or unlawful shall be destroyed.

8 (b) The commissioner of public safety may adopt regulations
9 necessary to carry out the provisions of this section.

10 * Sec. 2. AS 12.55.015(a) is amended to read:

11 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in
12 imposing sentence on a defendant convicted of an offense, may singly
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21 (5) order the defendant to make restitution under [AS
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26 imposed under [AS PROVIDED IN] AS 12.55.080;

27 (8) suspend imposition of sentence under [AS PROVIDED IN]
28 AS 12.55.085;

29 (9) order the forfeiture to the commissioner of public

1 safety of a deadly weapon that was in the actual possession of or used
2 by the defendant during the commission of an offense described in
3 AS 11.4), AS 11.56, or AS 11.61.

4 * Sec. 3. AS 12.55.015 is amended by adding a new subsection to read:

5 (f) In this section "deadly weapon" has the meaning given in
6 AS 11.81.900.
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IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE-FIRST SESSION

A BILL

For an Act entitled: "An Act relating to forfeiture of property used in connection with trafficking in controlled substances; amending AS 17.30.110-17.30.126; and providing for an effective date.

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

*Section 1. AS 17.30.110 is amended to read:

Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following may be forfeited to the state or to a municipal law enforcement agency:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

*Section 2. AS 17.30.112 is amended to read:

Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Property listed in AS 17.30.110 may be forfeited to the state or to a municipal law enforcement agency either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

(b) A municipal law enforcement agency may institute a forfeiture action under AS 17.30.110-.126

(1) if the arrest or seizure of property under this chapter or AS 11.71 was made by that agency; or

(2) if the evidence upon which an in rem action may be brought has been obtained by that agency.

(c) When property listed in 17.30.110 has been seized through the efforts of two or more law enforcement agencies, a forfeiture action may be brought by either agency, and the disposition of property shall be made in accordance with an agreement between the respective agencies or by order of the court.

(d) [(b)] It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71.

public safety or a [an authorized] municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court;

or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(c) Within 10 days after a seizure under AS 17.30.110-17.30.126, the commissioner of public safety or the head of a municipal law enforcement agency shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any item seized other than controlled substances.

*Section 4. AS 17.30.116 is amended to read:

Sec. 17.30.116. PROCEDURE FOR FORFEITURE ACTION. (a) Within 20 days after a seizure under AS 17.30.110-17.30.126, the commissioner of public safety or the head of a municipal law enforcement agency shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety or the head of a municipal law enforcement agency shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general cir-

*Section 5. AS 17.30.122 is amended to read:

Sec. 17.30.122. STATE OR MUNICIPAL LAW ENFORCEMENT AGENCY DISPOSAL OF FORFEITED PROPERTY. (a) Property forfeited to the state under AS 17.30.110-17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

(1) destroy property harmful to the public;

(2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol.

(b) Property forfeited to a municipal law enforcement agency under AS 17.30.110-17.30.126 other than controlled substances shall be disposed of by the head of a municipal law enforcement agency subject to the requirements of state and local law. The head of a municipal law enforcement agency may

state or a municipal law enforcement agency. The commissioner of public safety [or], the commissioner's designee, [including] or the head of a municipal law enforcement agency [authorized under AS 17.30.114(b) of this section to retain custody of controlled substance,] is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state or a municipal law enforcement agency.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

April 24, 1987

Representative Ron Larson
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Larson:

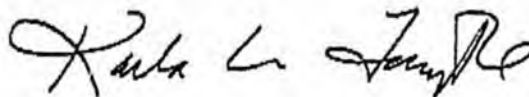
I am writing to convey some minor court system concerns about the wording of House Bill 203, an act relating to forfeiture of weapons used to commit a crime. These comments relate only to Section 1, which provides for remission of a forfeited weapon.

1. The bill provides that a claimant seeking remission of a weapon or remittance of the value of the claimant's interest in a weapon ordered forfeited under AS 12.55.015 may obtain an order from the court for return of the weapon or the interest in the weapon, upon certain showings to the court. Would this provision apply to forfeitures ordered as a condition of probation as well as forfeitures ordered as part of a direct sentence?
2. The procedure for filing a claim raises several questions. Is there a deadline for filing a claim? Would the claim be filed by a citizen, by enforcement officers, or by a prosecutor? Also, there is the possibility that at the time of the claim the court may not have the weapon. Additionally, what form of notice, if any, would be provided to persons who might potentially have a claim in such a weapon?
3. Under paragraph (b) it is not clear who would be responsible for paying the claimant for the claimant's interest in the weapon.

Representative Ron Larson
April 24, 1987
Page Two

Thank you for the opportunity to comment on this bill. I will be glad to answer any questions.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative C. E. Swackhammer
Representative Nilo Koponen
Representative Robin Taylor
Representative John Sund
Arthur H. Snowden, II, Administrative Director

BILL NO: HB 203

DATE: 4/01/87

TITLE: "An Act relating to forfeiture of weapons used to commit a crime."

CONTACT: James D. Vaden Deputy Commissioner

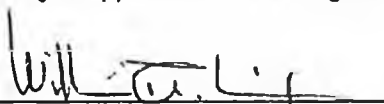
DEPARTMENT OF PUBLIC SAFETY

This legislation adds a new paragraph to the general sentencing provisions' statute which would authorize a court to order the forfeiture, as part of the defendant's sentence upon conviction, of a deadly weapon which was possessed or used by a defendant during the commission of a crime.

Forfeited weapons suitable for sporting purposes would be sold at public auction.

The following amendment is proposed: Sec. 12.36.060. DISPOSAL OF FORFEITED DEADLY WEAPONS. (a) A deadly weapon forfeited under AS 12.55.015, unless remitted under AS 12.36.050, shall be disposed of by the commissioner of public safety under this section. The commissioner of public safety may dispose of each weapon suitable for sporting purposes by declaring them as surplus and transferring them to the department of administration for public auction.

The Department of Public Safety supports this legislation.


William R. Nix
Acting Commissioner

DEPARTMENT OF PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 203

Publish Date: _____

REQUEST
Revision Date: _____
Title: "An Act relating to forfeiture
of weapons used to commit a crime."
Sponsor: Rep. Larson
Requestor: House Judiciary

Agency Affected: Public Safety

BRU: Alaska State Troopers

Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *FCA*

Phone: 269-5691

Division: Alaska State Troopers

Date: 3/26/87

Approved by Commissioner: William R. Mix *W. Mix*

Date: 3/31/87

Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

JMR
3/31/87

H B

207

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

April 17, 1987

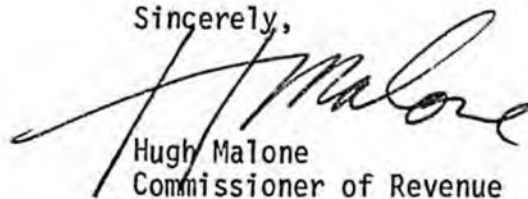
The Honorable John Sund
Chairman, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Chairman Sund:

The Administration, and this department, support CS for HB 207 with enthusiasm. In essence, the bill provides that capital gains, either of stocks or bonds, will be added to principal beginning next fiscal year. However, capital gains will continue to be used in calculations of the size of future dividends.

The advantages of the bill are two: it offers a way to build the Permanent Fund without external contributions (the size and timing of which are very uncertain at this juncture). It also assures that decisions to sell will be governed by the quality of various securities and by the best professional judgment on the direction of financial markets

Sincerely,



Hugh Malone
Commissioner of Revenue

HM:mkw
87-77

cc: The Honorable Fran Ulmer
Chair, House State Affairs Committee

The Honorable Mike Davis, Sponsor



Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

MEMORANDUM

To: House State Affairs Committee

From: Rep. Mike Davis *Mike Davis*

Re: Legislation relating to capital gains on sales of investments from the Alaska permanent fund

Date: April 13, 1987

The recent sale of permanent fund stocks has brought the management of permanent fund earnings to the attention of Alaska residents. Under current law, revenues generated from the sale of stock are deposited into the earnings of the permanent fund. This has not always been the case. In 1980 when the original law was enacted, it required that capital gains from the sale of permanent fund stock be deposited into the principle of the fund.

HB 207 requires that capital gains from the sale of permanent fund investments be deposited into the principle of the permanent fund. It is the intent of this legislation to remove the incentive of management decisions of the sale of investments from being based on the current state of the budget in any particular fiscal year. These decisions should be made based on the trends of the financial market and the long term investment plan of the Permanent Fund corporation.

In addition, this legislation could provide additional inflation proofing to the Fund for years when 50% of the earnings will not equal inflation proofing.

HB 208 would deposit the FY 87 capital gains from sale of investments into the principle of the permanent fund. This years capital gains is approximately \$220,829,214.78.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 4-27-87 1:30p.m.

HOUSE COMMITTEE REPORT

Date referred:

4/15/87

FURTHER REFERRALS:

Finance

DATE:

4-27-87

HB 207

the Judiciary

Committee has considered

an Act relating to capital gains on sales of investments from the Alaska permanent fund; and providing for an effective date."

RECOMMENDS:

- replace with CS 43207(SA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

COPIES: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

WHICH DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signatures]

Chairman's signature



Alaska Permanent Fund Corporation

Pouch 4-1000 Juneau, Alaska 99802

(907) 465-2047 Telex 099-46-323

M E M O R A N D U M

DATE: April 13, 1987

TO: Representative Mike Davis

FROM: Jim Kelly *JK*
Research & Liaison Officer

SUBJECT: Financial Projections for House Bills Nos. 207 and 208

Per your request, I have prepared several financial projections which depict the impact of your proposed legislation on future Permanent Fund balances, earnings and distributions.

STATUS QUO: This financial projection shows the projected principal balances, earnings and dividend distributions assuming no changes in existing law.

HOUSE BILL NO. 207: This financial projection shows the effect of enacting HB 207. This bill would leave the status quo unchanged except that at the end of each fiscal year (effective with fiscal 1987), all net realized capital gains would be added to Fund principal.

In a year such as fiscal 1987, when earnings are sufficiently high and the rate of inflation is sufficiently low to allow full payment of dividends and inflation-proofing, HB 207 would have the effect of transferring to Fund principal net realized capital gains that otherwise would remain in the Earnings Reserve Account in the Permanent Fund subject to appropriation by the legislature.

For fiscal 1987, from July 1, 1986 to March 13, 1987, the amount of net realized capital gains totals \$322.6 million.

In a year when there are insufficient earnings to fully pay both dividends and inflation-proofing, under the provisions of HB 207, dividends would still get first priority, and all the remaining income would be added to principal.

SPONSOR SUBSTITUTE HOUSE BILL NO. 207: The proposed SS HB 207 differs from the original version of the bill in that each year's dividend calculations would exclude net capital gains realized effective with fiscal 1987.

As you can see, the amount paid to the Dividend Fund for fiscal 1987 would be reduced from \$389 million, under both the status quo and the original version of HB 207, to \$322 million. This would have the effect of reducing this year's per capita dividends from approximately \$723 to \$595. The sponsor substitute also has the effect of reducing dividends for the next four years, relative to the status quo.

However, beginning in fiscal 1992, dividends would become larger than under existing law because of the impact of the increased amount of Fund principal which, in turn, produces higher earnings. In fact, over the long term, compared to the status quo, SS HB 207 actually produces a cumulatively higher total amount of:

- * dividends - \$13.655 billion versus \$13.631 billion;
- * principal - \$26.577 billion versus \$25.927 billion; and
- * net income - \$31.017 billion versus \$30.343 billion.

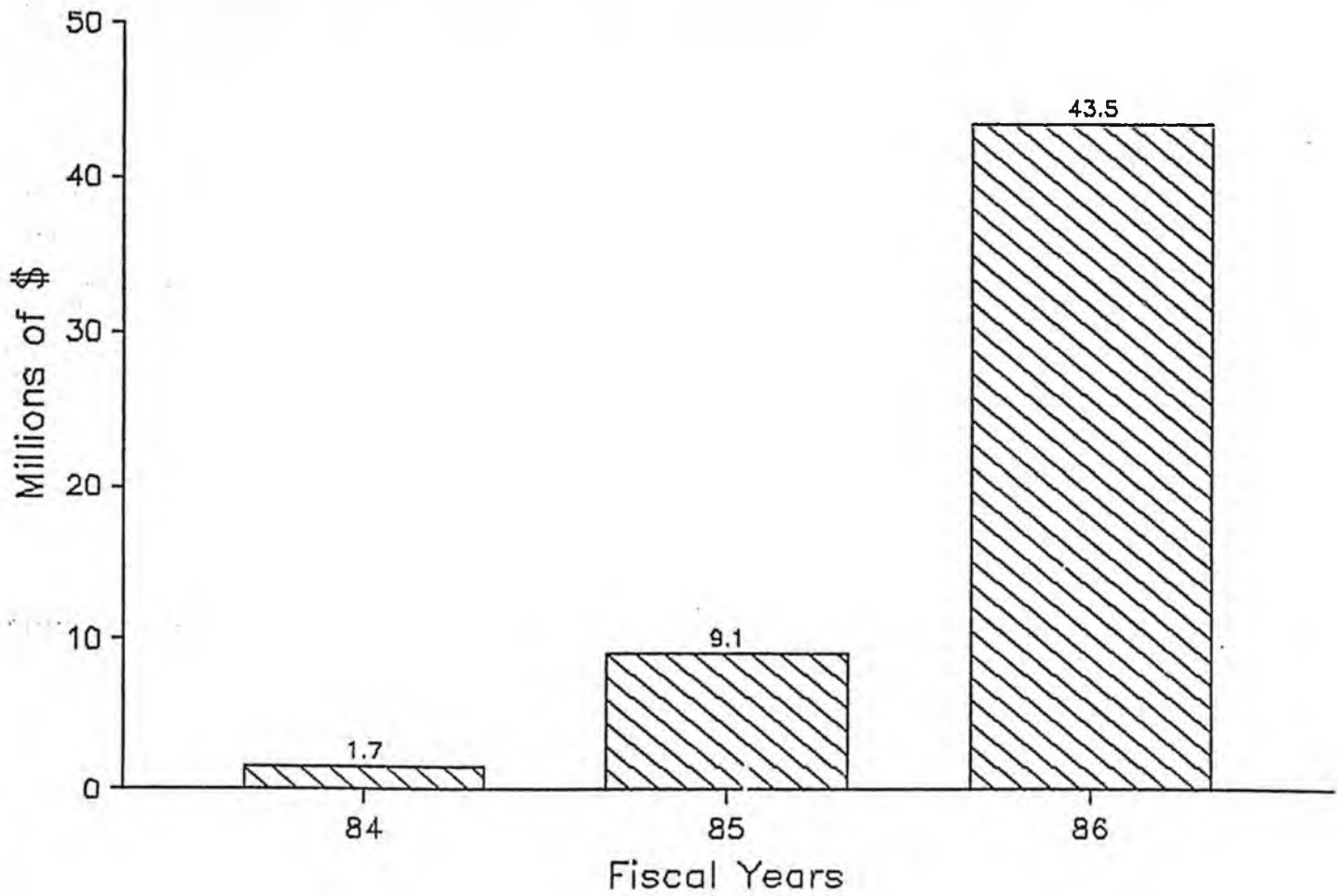
It should be noted that none of the financial projections produced by the Corporation include any future capital gains. This is not to say that there won't be any, but rather that it is impossible to project for them. Whether or not the Corporation will realize a particular capital gain in either stocks or bonds depends on the performance of the financial markets at a particular time and the current investment strategy of the Trustees.

Attached for your information are two charts which shows the capital gains which the Corporation has realized on an historical basis.

HOUSE BILL NO. 208: This financial projection shows the effect of adding to principal the capital gain realized from the extraordinary sale of stock which took place between February 26 - March 13 of this year: \$220,829,000.

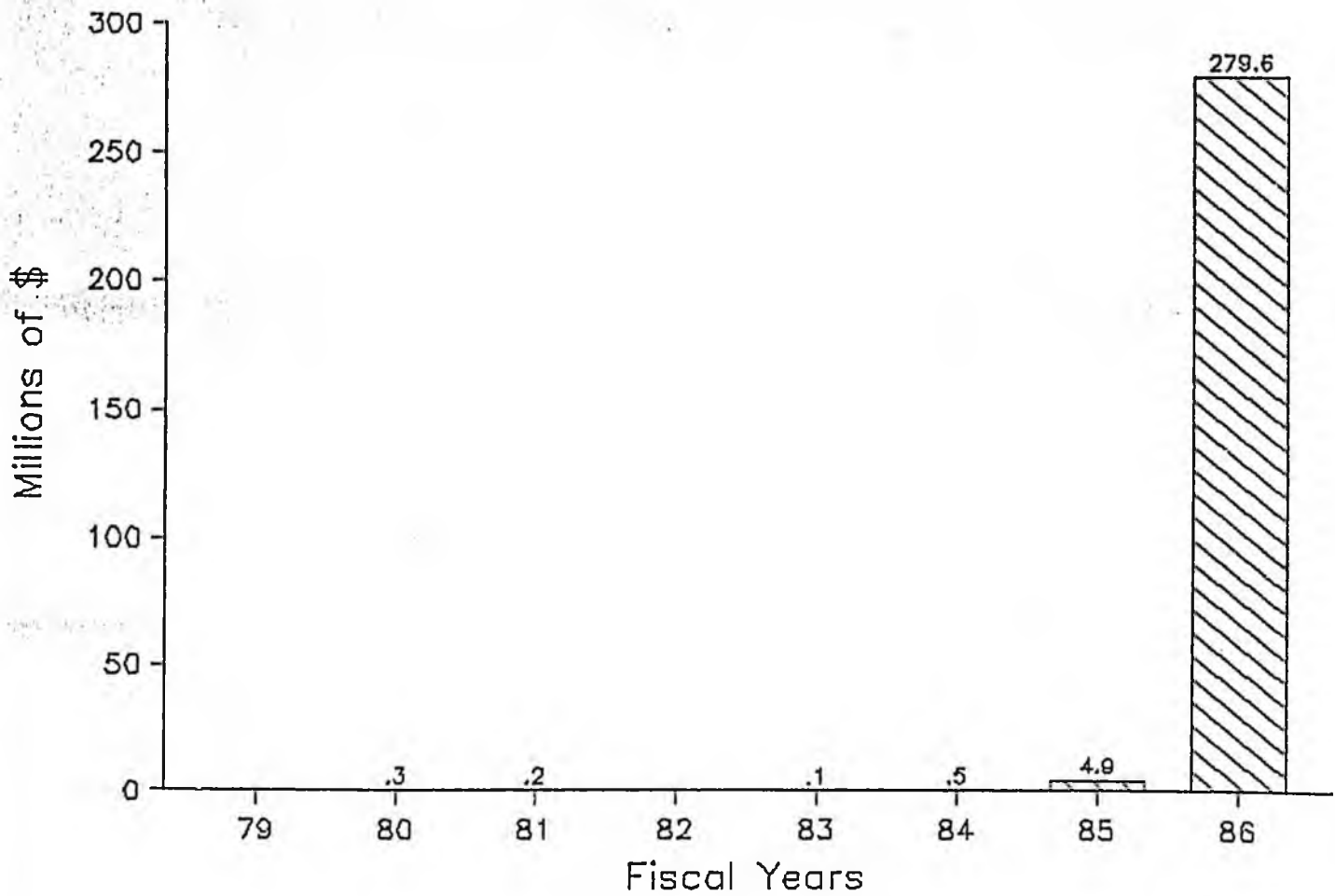
REALIZED GAINS IN STOCKS

Permanent Fund Stock Portfolio



REALIZED GAINS IN BONDS

Permanent Fund Bond Portfolio





Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of March 20, 1987

FY	PRINCIPAL					INCOME					Reserves		
	FY Begin Balance	Appropriations	Dedicated State Revenues ^a	Inflation Proofing	FY End Balance	Inflation Proofing Shortfall	Net Income	Dividends	Per Capita Dividends ^{**}	Inflation Proofing	General Fund	Add (Delete)	FY End Balance
78			54		54		2				1		
79	54		84		139		8				7		
80	139		344		483		32	12			12		
81	483	900	385		1,769		150	28			28	59	59
82	1,769	800	401		2,969		358	71	\$1,000.00		71	185	244
83	2,969	400	421	231	4,021		471	108	\$386.15	231	110	110	354
84	4,021	300	366	151	4,838		530	175	\$331.29	151		204	557
85	4,838	300	368	235	5,741		658	217	\$404.00	235		206	763
86	5,741		323	216	6,281		1,021	303	\$556.26	216		501	1,264
87	6,281	1,264	150	148	7,843		1,047	389	\$723.21	148		510	510
88	7,843		165	320	8,329		795	423	\$789.05	320		51	561
89	8,329		187	511	9,026		847	457	\$848.03	511		(121)	440
90	9,026		206	554	9,787		902	483	\$892.96	554		(135)	306
91	9,787		194	599	10,580		960	477	\$878.35	599		(116)	190
92	10,580		211	647	11,438		1,025	476	\$870.63	647		(98)	92
93	11,438		225	682	12,345	18	1,097	507	\$925.18	682		(92)	
94	12,345		230	633	13,208	122	1,174	542	\$984.27	633			
95	13,208		230	677	14,114	130	1,256	579	\$1,047.94	677			
96	14,114		229	722	15,065	138	1,341	619	\$1,116.03	722			
97	15,065		231	769	16,066	149	1,431	661	\$1,188.59	769			
98	16,066		231	819	17,115	159	1,525	706	\$1,264.46	819			
99	17,115		228	870	18,213	170	1,624	753	\$1,343.66	870			
0	18,213		223	924	19,360	182	1,727	803	\$1,426.43	924			
1	19,360		217	980	20,557	195	1,835	855	\$1,512.75	980			
2	20,557		215	1,038	21,811	208	1,947	909	\$1,602.37	1,038			
3	21,811		210	1,100	23,120	222	2,065	966	\$1,695.85	1,100			
4	23,120		208	1,164	24,491	236	2,189	1,025	\$1,792.98	1,164			
5	24,491		205	1,231	25,927	251	2,318	1,087	\$1,833.77	1,231			

Cumulative Totals:	3,964		6,742	15,220	25,927	2,180	30,343	13,631	\$25,474.11	15,220	229	1,264	

ASSUMPTIONS: 1.92% Inflation Rate FY 87
 ----- 13.94% Rate of Return FY 87

4.00% Inflation Rate FY 88
 9.60% Rate of Return FY 88

* SOURCE: Alaska Department of Revenue
 30% Case Forecast - March 1987

STATUS QUO

6.00% Inflation Rate FY 89-05
 9.00% Rate of Return FY 89-05

** SOURCE: Population Projections From
 DOR Revenue Source Book - Page 44



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of March 20, 1987

FY	PRINCIPAL						INCOME				Reserves	
	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation Proofing	FY End Balance	Inflation Proofing Shortfall	Net Income	Distributions		General Fund	Add (Delete)	FY End Balance
								Per Capita Dividends**	Inflation Proofing			
78			54		54	2				1		
79	54		84		139	8				7		
80	139		344		483	32	12			12		
81	483	900	385		1,769	150	28			28	59	59
82	1,769	800	401		2,969	368	71	\$1,000.00		71	185	244
83	2,969	400	421	231	4,021	471	108	\$386.15	231	110	110	354
84	4,021	300	366	151	4,838	530	175	\$331.29	151		204	557
85	4,838	300	368	235	5,741	658	217	\$404.00	235		206	763
86	5,741		323	216	6,281	1,021	303	\$556.26	216		501	1,264
87	6,281	1,264	150	470	8,166	1,047	389	\$723.21	470		107	187
88	8,166		155	333	8,664	795	423	\$789.05	333		39	226
89	8,664		137	531	9,382	847	457	\$848.03	531		(141)	85
90	9,382		206	504	10,092	902	483	\$892.96	504		(85)	
91	10,092		194	483	10,769	960	477	\$878.35	483			
92	10,769		211	549	11,530	1,025	476	\$870.63	549			
93	11,530		225	590	12,345	1,097	507	\$925.19	590			
94	12,345		230	633	13,208	1,174	542	\$984.27	633			
95	13,208		230	677	14,114	1,256	579	\$1,047.94	677			
96	14,114		229	722	15,065	1,341	619	\$1,116.03	722			
97	15,065		231	769	16,066	1,431	661	\$1,188.59	769			
98	16,066		231	819	17,115	1,525	706	\$1,264.46	819			
99	17,115		228	870	18,211	1,624	753	\$1,343.66	870			
0	18,213		223	924	19,360	1,727	803	\$1,426.43	924			
1	19,360		217	980	20,557	1,835	855	\$1,512.75	980			
2	20,557		215	1,038	21,811	1,947	909	\$1,602.37	1,038			
3	21,811		210	1,100	23,120	2,065	966	\$1,695.85	1,100			
4	23,120		208	1,164	24,491	2,189	1,025	\$1,792.83	1,164			
5	24,491		205	1,231	25,927	2,318	1,087	\$1,893.77	1,231			

Cumulative Totals:	3,964		6,742	15,220	25,927	2,592	30,343	13,631	\$25,474.11	15,220	229	1,264

ASSUMPTIONS: 1.92% Inflation Rate FY 87
13.94% Rate of Return FY 87

4.00% Inflation Rate FY 88
9.00% Rate of Return FY 88

* SOURCE: Alaska Department of Revenue
30% Case Forecast - March 1987

6.00% Inflation Rate FY 89-95
9.00% Rate of Return FY 89-95

** SOURCE: Population Projections From
DOR Revenue Source Book - Page 44



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS (in millions)

as of March 20, 1997

FY	PRINCIPAL						INCOME					Reserves	
	FY Begin Balance	Appro- priations	Dedicated		Inflation Proofing Shortfall	FY End Balance	Net Income	Distributions			General Fund	Add (Delete)	FY End Balance
			State Revenues*	Inflation Proofing				Per Capita Dividends**	Inflation Proofing				
78			54		54	2				1			
79	54		84		139	8				7			
80	139		344		483	32	12			12			
81	483	900	385		1,769	150	28			28	59	59	
82	1,769	800	401		2,969	368	71	\$1,000.00		71	185	244	
83	2,969	400	421	231	4,021	471	108	\$386.15	231	110	110	354	
84	4,021	300	366	151	4,838	530	175	\$331.29	151		204	557	
85	4,838	300	368	235	5,741	658	217	\$404.00	235		206	763	
86	5,741		323	216	6,281	1,021	303	\$556.26	216		501	1,264	
87	6,281	1,264	150	470	8,166	1,047	322	\$594.79	470		255	255	
88	8,166		165	333	8,664	801	356	\$661.63	333		112	367	
89	8,664		187	531	9,382	860	391	\$723.80	531		(52)	305	
90	9,382		206	575	10,164	923	453	\$836.19	575		(105)	199	
91	10,164		194	622	10,979	986	450	\$827.83	622		(86)	113	
92	10,979		211	671	11,862	1,055	486	\$889.52	671		(102)	12	
93	11,862		225	621	12,708	1,130	520	\$949.21	621		(12)		
94	12,708		230	652	13,590	1,209	557	\$1,012.28	652				
95	13,590		230	696	14,516	1,292	595	\$1,078.61	696				
96	14,516		229	742	15,487	1,379	637	\$1,149.16	742				
97	15,487		231	790	16,508	1,470	680	\$1,223.23	790				
98	16,508		231	840	17,579	1,567	726	\$1,300.79	840				
99	17,579		229	893	18,700	1,667	774	\$1,381.84	893				
0	18,700		223	948	19,871	1,773	825	\$1,466.27	948				
1	19,871		217	1,005	21,093	1,883	878	\$1,554.23	1,005				
2	21,093		215	1,065	22,373	1,998	933	\$1,645.84	1,065				
3	22,373		210	1,127	23,710	2,118	991	\$1,741.11	1,127				
4	23,710		208	1,193	25,110	2,244	1,052	\$1,840.28	1,193				
5	25,110		205	1,261	26,577	2,376	1,115	\$1,943.27	1,261				

Cumulative Totals:	3,264		6,742	15,370	26,577	2,326	31,017	13,655	\$25,497.60	15,870	229	1,264	

ASSUMPTIONS: 1.92% Inflation Rate FY 87
 ----- 13.94% Rate of Return FY 87

4.00% Inflation Rate FY 89
 9.00% Rate of Return FY 88

* SOURCE: Alaska Department of Revenue
 30% Case Forecast - March 1987



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS

(in millions)

as of March 20, 1987

FY	PRINCIPAL						INCOME					Reserves	
	FY Begin Balance	Appro- priations	Dedicated State Revenues*	Inflation Proofing	FY End Balance	Inflation Proofing Shortfall	Net Income	Distributions			General Fund	Add (Delete)	FY End Balance
								Dividends	Per Capita Dividends**	Inflation Proofing			
78			54		54		2				1		
79	54		84		139		8				7		
80	139		344		483		32	12			12		
81	483	900	385		1,769		150	28			28	59	59
82	1,769	800	401		2,969		368	71	\$1,000.00		71	185	244
83	2,969	400	421	231	4,021		471	108	\$386.15	231	110	110	354
84	4,021	300	366	151	4,838		530	175	\$331.29	151		204	557
85	4,838	300	368	235	5,741		658	217	\$404.00	235		206	763
86	5,741		323	216	6,281		1,021	303	\$556.26	216		501	1,264
87	6,281	1,264	150	369	8,064		1,047	389	\$723.21	369		289	289
88	8,064		165	329	8,558		795	423	\$789.05	329		43	332
89	8,558		187	525	9,270		847	457	\$848.03	525		(135)	197
90	9,270		206	569	10,045		902	483	\$892.96	569		(149)	48
91	10,045		194	530	10,769	84	960	477	\$878.35	530		(48)	
92	10,769		211	549	11,530	109	1,025	476	\$870.63	549			
93	11,530		225	590	12,345	115	1,097	507	\$925.18	590			
94	12,345		230	633	13,208	122	1,174	542	\$984.27	633			
95	13,208		230	677	14,114	130	1,256	579	\$1,047.94	677			
96	14,114		229	722	15,065	138	1,341	619	\$1,116.03	722			
97	15,065		231	769	16,066	149	1,431	661	\$1,188.59	769			
98	16,066		231	819	17,115	159	1,525	706	\$1,264.46	819			
99	17,115		228	870	18,213	170	1,624	753	\$1,343.66	870			
0	18,213		223	924	19,360	182	1,727	803	\$1,426.43	924			
1	19,360		217	980	20,557	195	1,835	855	\$1,512.75	980			
2	20,557		215	1,038	21,811	208	1,947	909	\$1,602.37	1,038			
3	21,811		210	1,100	23,120	222	2,065	966	\$1,695.85	1,100			
4	23,120		208	1,164	24,491	236	2,189	1,025	\$1,792.88	1,164			
5	24,491		205	1,231	25,927	251	2,318	1,087	\$1,893.77	1,231			
Cumulative Totals:		3,964	6,742	15,220	25,927	2,470	30,343	13,631	\$25,474.11	15,220	229	1,264	

ASSUMPTIONS: 1.92% Inflation Rate FY 87
 ----- 13.94% Rate of Return FY 87

4.00% Inflation Rate FY 88
 9.00% Rate of Return FY 88

* SOURCE: Alaska Department of Revenue
 30% Case Forecast - March 1987

6.00% Inflation Rate FY 89-05
 9.00% Rate of Return FY 89-05

** SOURCE: Population Projections From
 OOR Revenue Source Book - Page 44



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Revised
The copy
10/10

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 13, 1987

MEMORANDUM

TO: Representative Mike Davis

ATTN: Marilyn Heiman

FROM: Ginny Fay *g.fay*
Legislative Analyst

RE: Alaska Permanent Fund Capital Gains
Research Request 87.261

You requested information regarding how investment funds similar to the Alaska Permanent Fund define and manage capital gains. You indicated that you are specifically interested in the Harvard Management Corporation that manages the Harvard Endowment Fund. Under the current time constraint, information from the Harvard Management Corporation was not available. This memorandum does provide, however, information on the Alberta Heritage Fund, the Montana Investment Fund, and the State of Wisconsin Investment Board. The two former funds are more similar to the Alaska Permanent Fund than the Harvard Fund (Table 1). Management decisions on capital gains and other earnings are significantly influenced by fund objectives which should be considered when making comparison between funds.

Alberta Heritage Savings Trust Fund (AHST)

The Alberta Heritage Savings Trust Fund is often considered most comparable to the Alaska Permanent Fund (APF). The AHST was created as a permanent trust for future residents from nonrenewable natural resources revenues. While the APF principal is managed and invested as a single unit, the AHST is divided into smaller funds that are managed for varied purposes. A portion (approximately 10 percent) of the \$15 billion fund is invested similarly to the APF in income-producing common stock and government securities. The majority of the fund, however, is dedicated to "social investing." These are investments in Alberta to further economic development. The social investing management policy has resulted in a significantly lower rate of return for the fund.¹

¹Sheila F. Helgath and Sarah A. Bibb, "The Alaska Permanent Fund Legislative History, Intent, and Operations," Alaska State Senate, Rural Research Agency, 1986, p. 110.

The AHST considers all capital gains earnings of the fund. Since September 1982, all earnings are placed in the general fund. This policy was developed as a result of the down turn in the Alberta economy. The government expenditure of fund earnings is directed toward stimulating the economy and encouraging economic activities based on their assessment that the private sector alone is not capable of boosting the economy given the current recession. They also believe that it is not politically acceptable to retain earnings under the present economic conditions that have resulted in a rise in unemployment. Not only are fund earnings being placed in the general fund, natural resources revenues are being placed in the general fund this year to maintain the level of government services and to cushion the shock to the regional economy from the decline in the price of oil. This policy is likely to change when oil prices rebound and stabilize. The AHST does not inflation proof; the only mechanism for increasing the principal of the fund is through transfer of resource revenues into the fund.

Montana Permanent Coal Trust Fund (MPCT)

The Montana Permanent Coal Trust Fund is similar to the Alaska Permanent Fund and the Alberta Heritage Savings Trust Fund in that it also invests a portion of nonrenewable resource revenues. The MPCT is jointly invested with other funds in the state.² Capital gains are considered and managed as earnings by the MPCT. Because the Montana trust is comprised of several different funds, earnings are managed differently depending on the intent of the original fund. Earnings from retirement fund earnings, for example, are returned to the principal. Earnings from the Nonrenewable Resource Fund, however, are placed in the general fund. Approximately 75 percent of these earnings are dedicated and paid to 25 different agencies. Approximately 25 percent are undedicated funds in the general fund. Overall, approximately 25 percent of the fund's earnings contributes to education funding in Montana.

Similar to the Alberta fund, the Montana fund's current policy is to use earnings to help pay budget deficits, maintain the same level of government services, and offset the current economic recession. There has been no significant cutting of the state budget with the exception of funding for highways and public works. Social services and the university budget have been maintained. The Montana legislature is currently considering legislation to place resource revenues into the general fund this year rather than into the MPCT.

²Ibid., p. 112.

Representative Mike Davis
April 13, 1987
Page 3

State of Wisconsin Investment Board (SWIB)

This fund, which serves as a clearinghouse for a wide variety of government investments, is actually quite different from the APF.³ Because of the difference in objectives and portfolio composition, it is difficult to compare capital gains management strategies. The bulk of the SWIB is comprised of funds from retirement accounts. Capital gains from retirement funds and other moneys are considered earnings which are put in an amortization account which serves as a buffer account to smooth out earnings of the fund. Annually seven percent of the amortization account is returned to the principal of the retirement funds. "Excess" earnings in the buffer account are periodically "raided" by the legislature. But because of the relatively low earnings of the SWIB, this is fairly unusual. This year, as a result of the exceptional performance of the stock market, the amortization account contains \$2.5 million in excess funds. Legislation has been introduced to use these funds as general funds by returning them to the retirement accounts in lieu of contributions by state agencies. Legislatively, Wisconsin has a nonrenewable resource trust fund. With the fall in the price of copper, however, the project to contribute these funds was cancelled and no earnings have been received.

I hope this information is useful. If you have any questions or wish additional information, please contact this agency.

Attachment

³Ibid., p. 111.

Table 1. Comparison of Large Pension, Endowment and Government Investment Funds with the Alaska Permanent Fund.

FUND	ASSET COMPOSITION	RETURNS
ALASKA PERMANENT FUND Objectives: Preservation of principal and annual income stream. Size: \$5.7 billion Year: 1984 Started: 1977 Staff: 11 Administrative Cost: \$2,695,000. Inflation Proofing: CPI Index	81% fixed income, CD's government and corporate securities,	Dollar-Weighted
	12% common stock	Year NOM
	2% real estate	1977 5.54%
	1% conventional mortgages	1978 7.53%
	2% Alaska CD's	1979 8.24%
		1980 11.3%
		1981 6.00%
		1982 15.1%
		1983 12.8%
		1984 10.9%
	1985 11.6%	
MONTANA INVESTMENT FUNDS Objectives: Variable the Coal Trust is a similar to APFC. Size: \$1.8 billion, \$200 million in fund Year: 1984 Started: 1971 Staff: 17 Administrative Cost: \$449,164. Annual Inflation Proofing: 15% of earnings	83% Government Securities & Corporate bonds	Time-weighted Equities
	5% Canadian Obligations	1974-84
	5% common stocks	11.3%
	4% short term commitments	1984
	8% Montana mortgages & business loans	-4.8%
		Fixed Income
		1977-84
		7.2%
		1984
		2.4%

Table 1. Comparison of Large Pension, Endowment and Government Investment Funds with the Alaska Permanent Fund.
(continued)

FUND	ASSET COMPOSITION	RETURNS
WISCONSIN INVESTMENT BOARD Objective: Invest state pension funds Size: \$1.575 billion Year: 1984 Started: U.K. Staff: 10 no secretarial reported Administrative Cost: \$1,821,354 annual Inflation Proofing: UK	46.9% public bonds and private loans includes foreign bonds	Time-Weighted <u>Fixed Fund</u> 1978-84 9.8% 1983 38.2% 1984 -1.0%
	36.4% common and preferred stock includes foreign stock 14.8% State Investment Fund 0.1% real estate 1.8% mortgages	<u>Variable (equities) Fund</u> 1978-84 13.3% 1984 1.3%
ALBERTA HERITAGE FUND Objective: Multi objective fund, savings, strengthen diversify economy, and improve quality of life of citizens. \$1.5 billion portion similar to APFC but a sizable portion in development bank non commercial rate loans located within Alberta. Fund from dedicated non renewable resource revenues. Size: CD\$15.08 billion Year: 1985 Started: 1976 Annual Administrative Cost: \$1,966,000. entire fund Inflation Proofing: None as of 1983	17% common stocks 83% CD's, government securities, and bonds Represents only portion most similar to the Alaska Permanent Fund	Dollar-weighted? nominal rate of return 1980 10.8% 1981 12.6% 1982 13.9% 1983 13.4% 1984 13.7%

Table 1. Comparison of large Pension, Endowment and Government Investment Funds with the Alaska Permanent Fund. (continued)

HARVARD ENDOWMENT FUND	25.8%	Cash Reserves	1982	0.1%
Objective: To provide continuous income for Univ.	21.7%	Bonds	1983	42.0%
Size: \$2.48 billion	56.8%	Stocks	1984	3.6%
Year: 1984		includes a small percentage in foreign stocks and bonds.		
Started: 1974				
Administrative Cost: \$7.7 million				
Inflation Proofing: Unknown Amount: \$7.7 million				
Inflation Proofing: Unknown				
Staff Size: 85				

Source: Sheila F. Helgath and Sarah A. Bibb, "The Alaska Permanent Fund Legislative History, Intent and Operations," Alaska State Senate, Rural Research Agency, 1986, p. 110.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB207

Publish Date: _____

REQUEST _____

Revision Date: _____

Title: An Act relating to capital gains
on sales of investments from...APF...

Sponsor: Davis et al

Requestor: House State Affairs

Agency Affected: REVENUE

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Millions of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Prepared By: Mary Ellen Frank ME 7

Division: Research

Phone: 465-2174

Date: 4/14/87

Approved by Commissioner: [Signature]

Agency: _____

Date: 4/16/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

No estimate of the proportion of projected PF earnings that will be capital gains is possible because of unknown timing and investment decisions which depend on market conditions. Recent numbers actually realized are depicted below but are not necessarily indicative of what the future sources of PF income might be.

(\$ millions)	Capital Gains as a % of Total Earnings			
	1984	1985	1986	1987 to date
Capital gains	2,126	17,912	332,716	152,254
PF earnings	532,152	661,740	1,026,240	617,885
Cap. Gains/PF earnings	.4%	2.7%	32.4%	24.6%

The overall effect of the legislation is to transfer amounts that would have been in the Earnings Reserve Account (ERA) to the principal of the PF. Current earnings forecasts indicate that the PF cannot be fully inflation proofed. Without this legislation, the shortfalls begin in FY1995 and total \$1468 million by FY2005, (with a total PF principal of \$27,134 million). The table below indicates what cumulative (by FY2005) changes would result from a range of percentages of PF earnings that are capital gains. Inflation proofing demands on current earnings and the ERA prevent the full amount of net capital gains from being retained, as can be seen in column four compared to column six.

Percent of Earnings that are Cap. Gains	Cumulative Difference Through FY2005(\$ millions).....				(\$millions) Total Capital Gains
	PF Prin'l	PF ERA	Retained Capital Gains	Dividend Fund	
5%	+295	-295	+295	0	+1493
10%	+437	-437	+437	0	+2986
20%	+593	-593	+593	0	+5972
30%	+676	-676	+676	0	+8958

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 207
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An Act Relating to Capital Gains
and Permanent Fund
Sponsor: Rep. Davis
Requestor: (H) S.A.

Agency Affected: Revenue
BRU: PFC

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	0	0	0	0	0
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Prepared By: Royce Weller Phone: 465-2300
Division: Info. provided by Permanent Fund Corporation Date: April 13, 1987

Approved by Commissioner: Hugh Malone Date: April 13, 1987
Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

H B

2 2 3

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature



House of Representatives

SOLDOTNA
PO. BOX 417
SOLDOTNA, ALASKA 99869
(907) 262-7663
JUNEAU
BOX V
JUNEAU, ALASKA 99811
(907) 465-2689

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: Representative C.E. Swackhammer *Swack*

DATE: January 11, 1988

SUBJECT: Judiciary Committee Substitute for House Bill 223

After reviewing the substitute for HB 223, I concur with the improvements proposed by the Judiciary Committee.

By directing the claim through the Department of Revenue and automatically executing the claim, if a hearing is not requested, the amendments streamline the procedure and serve the purpose of claiming permanent fund dividends to satisfy student loan debts.

RECEIVED APR 16 1987



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

April 13, 1987

Representative Fran Ulmer
Chair, House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I am writing with regard to House Bill 223, which relates to permanent fund dividends. The Alaska Court System takes no position on the various substantive policy decisions involved in this measure. However, to the extent that this measure is intended to establish a procedure for taking permanent fund dividends to satisfy court-ordered fines, the court system has an interest in making certain that the adopted procedures are workable. The following comments address procedural and fiscal concerns.

Section 1. This section permits an agency, including the court system, to claim a permanent fund dividend on behalf of an individual believed to be eligible to receive a dividend. It is the understanding of the court system that many persons who are eligible to apply for dividends do not do so, particularly if they believe that the dividend will be attached to satisfy a child support obligation, a restitution order, or a private creditor. This provision would make the permanent fund dividend available to the court system to satisfy a fine even if a defendant has not applied for a dividend.

The court system takes no position on the desirability of this provision. Questions have been raised about the constitutionality of requiring a person to receive taxable income. It would be helpful if the Legislature could resolve the constitutional issue so that agencies can use this procedure without fear of litigation.

Section 2. This section sets forth the procedure for agencies to use in applying for a permanent fund dividend. It requires the Department of Revenue to provide an application form which an agency must fill out to support its belief that the individual is eligible to receive the dividend.

Representative Fran Ulmer

April 13, 1987

Page 2

Again, the court system takes no position about the desirability of this provision. Questions have been raised by the Department of Law about the ability of an agency to determine the eligibility of another person. Additionally, there are timing concerns which are particularly relevant to action by the court. Since a defendant may be sentenced several months before the current dividend application period (April through June), the court will not have current residency information at the time when the Department of Revenue is accepting dividend applications.

As a procedural matter, this section will require the courts to gather information about an individual's residency. This will probably occur at the time a defendant is sentenced (at arraignment, at a change of plea, or after trial). Additionally, court personnel will complete the application form, arrange for an appropriate signature, and forward the form to the Department of Revenue. It is estimated that this procedure will take approximately one hour.

Section 3 and Section 4. The court system takes no position on these two sections.

Section 5. This section clarifies confusion under existing law by providing that no exemption other than the one described in the first sentence of this statute is available to a person receiving a permanent fund dividend. Arguably, under the existing law, some debtors could also claim the liquid asset exemption described in AS 09.38.030(b).

Assuming the Department of Revenue automatically grants the 50% exemption provided by the first sentence, since no additional exemption is provided, this section further provides that the creditor (including the courts and other agencies as well as private creditors) need not serve the debtor with notice of exemption rights, thus significantly simplifying the execution procedures otherwise required by AS 09.38. The debtor will still receive notice, but it will come from the Department of Revenue, as provided in Section 6 of the bill, rather than from the creditor.

Additionally, this section provides that a writ may be mailed by certified mail to the Department of Revenue rather than delivered by a process server. This provision benefits not only state agencies but also private parties who are seeking to levy on a permanent fund dividend, since mailing is a less expensive method of service. This may, however, mean more work for the courts, since Civil Rule 4(h) requires service by certified mail to be done by courts.

Finally, this section specifically includes court-ordered fines within the non-exempt category and gives the fines a priority behind child support payments and restitution.

Section 5 of the bill is critical to developing a workable procedure. If existing execution procedures must be used, the state agencies will be required to process a substantial amount of paperwork and give the debtor an opportunity for a court hearing. In the case of a court-ordered fine the defendant is already before the court so due process considerations are met.

Some minor changes in Section 5 would be helpful. The court system proposes that the second and third sentences underlined in paragraph (a) [on lines 16-18 of page 3] be revised to provide: "When levying upon the non-exempt portion of a dividend, a creditor is not required to serve the individual with notice of levy under AS 09.38.080(c) and AS 09.38.085. A writ of execution may be served on the commissioner by certified mail under the rules of court for civil procedure." These additions would clarify the procedure and answer technical concerns raised by the Department of Law.

Section 6. This section permits the court system to send a certified copy of a court order or judgment to the Department of Revenue, rather than a writ of execution. Originally, the court system proposed this procedure because it appeared to be the easiest for the court. After discussion with the Department of Revenue, it appears that a writ of execution would be much more helpful to the department because it would provide more information about the defendant. The court system therefore proposes deleting the second sentence of paragraph D, starting at line 10 on page 4.

Although the court would be using a writ of execution, procedures under existing law would be much less burdensome because the court would be able to either mail the writ or have it delivered by troopers, whichever appeared most expedient.

The court system's fiscal note is based primarily on work requirements attributable to this section. Based on information provided by the Anchorage trial court, it is assumed that fines are due in approximately 1/6 of criminal cases charged under state law (not including traffic infractions). The clerical work require to process a writ of execution will include physical review of the file, cross-checking against various monitoring lists maintained by the clerk's office including those for outstanding warrants, and bookkeeping. All of this work must be completed with a high level of accuracy, since execution on a dividend for a defendant who has already paid the fine could result in costly litigation. The supervisor of the criminal division of the Anchorage clerk's office estimates that approximately three hours will be required to issue a writ of execution and arrange for delivery to the Department of Revenue, as well as to account for the dividend when it is received. Substantial time will also be expended reviewing old files to determine if a writ of execution should be issued to obtain a current dividend.

Although additional clerical positions would be required to perform this function, at an ongoing cost of \$112,400, the state will break even on this expenditure if an average of \$52 is collected from the dividend for each outstanding fine. A review of court records indicates an average fine of \$400 so it appears the work required to issue a writ of execution will be offset by revenue.

Representative Fran Ulmer
April 13, 1987
Page 4

In summary, although the court system takes no position on substantive issues raised by this legislation, and although efforts to create new procedures will result in additional clerical work, the court system supports development of workable procedures, and will be glad to work with the committee to this end.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative C. E. Swackhammer
Representative Dave Donley
Representative Terry Martin
Arthur H. Snowden, II, Administrative Director
Robert G. Fisher, Fiscal Officer
Susan Miller, Manager, Special Projects

4/10/87-2

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 2, 1987

The Hon. C. E. Swackhammer
Alaska State House
P.O. Box V
Juneau, AK 99811

Re: House Bill 223, relating to
permanent fund dividends
Our File No.: 663-87-0446

Dear Representative Swackhammer:

By memorandum dated March 19, 1987, you asked us to review a proposed bill to permit agencies to apply for and receive the permanent fund dividends of individuals who owe debts to the agencies. Specifically, you asked us to comment on the tax consequences of the proposal and to make any other general comments regarding the draft. A later version of this proposed bill was recently introduced as House Bill 223, and we will direct our comments to the version currently under consideration.

Federal Tax Implications

House Bill 223 would permit an "agency," defined as any state agency, state court, or municipality, to apply for and receive the permanent fund dividend of an individual who owes a debt to the agency. Assuming the procedure proposed to implement this process is workable (see discussion below), you have asked whether the agency's action will have federal income tax consequences to the individual. Although an absolute answer is impossible without either an Internal Revenue Service official ruling or a court decision, we believe a court would characterize this transaction as a discharge of a taxpayer's debt, thereby constituting income to the taxpayer under 26 U.S.C. § 61.

We understand that you asked the same question of the Legislative Affairs Agency. By memorandum dated March 20, 1987, Theresa L. Bannister stated that she could not, with any certainty, provide an answer to your question. On the one hand, the discharge of a taxpayer's debts is generally included in a taxpayer's gross income under 26 U.S.C. § 61. On the other hand, because the agency would claim the dividend on behalf of the taxpayer, who would never claim the dividend himself, the transaction could be viewed as simply a ~~DISBURSEMENT OF REVENUE~~

ADMINISTRATIVE SERVICES

APR 03 1987

DEPARTMENT OF LAW

taxpayer's debt by the agency. Thus the transaction might be excluded from income as a gift under 26 U.S.C. § 102.

We believe the better argument is that the discharge of a debt under these circumstances would constitute gross income. The bill permits agencies other than the state to apply for and receive an individual's dividend. In those cases where a municipality received an individual's dividend, an actual transfer of funds would take place from the dividend fund (within the state general fund) to the municipality. This would clearly be a discharge of debt, rather than a write-off of debt. Although the question is arguably closer where the state is the debtor, the language of the bill implies an actual discharge of a debt by the state, rather than a gift. Finally, as noted by Tamara Brandt Cook, Director of the Legal Services Division, Legislative Affairs Agency, in a memorandum dated March 23, 1987, were this to be interpreted as a gift, the transaction could violate article IX, section 6, of the Alaska Constitution. Given the generally aggressive posture of the Internal Revenue Service, which views any exemption claim with skepticism, we believe the IRS would treat any agency claim for a permanent fund dividend as taxable income to the individual.

Other Legal Issues

In addition to the tax issues, this bill raises other legal issues which deserve discussion. First, as outlined by Ms. Cook, this legislation would be subject to challenge under the due process requirements of the state and federal constitutions, because by exempting these transactions from the normal execution procedures in AS 09.25, the bill does not provide for notice and prior hearing before the seizure of the individual's property. Balancing the interest of the individual in a prior hearing against the interest of the agency in efficient government operations, and taking into account the relatively slight chance of a permanent deprivation in the event of an agency mistake, we believe the legislation might withstand a due process challenge. However, the only thing we can say with any certainty is that a challenge would likely occur.

Second, although providing an exemption from AS 09.25, the bill fails to mention applicable court rules. The Alaska Supreme Court has provided specific procedures for execution on judgments in Civil Rule 69. Because this rule specifically provides that enforcement of a judgment be by a writ of execution unless otherwise directed by the court, this rule would supercede the new legislation unless the bill is amended to specifically amend Civil Rule 69. Of course, the bill will then need to be

The Hon. C. E. Swackhammer
Alaska State House
File No.: 663-87-0446

April 2, 1987
Page 3

adopted by a two-thirds vote in each house of the legislature.
Alaska Constitution art. IV, § 15.

Third, this legislation raises some questions concerning how a particular agency is going to determine whether or not a particular individual "is eligible to receive the dividend." AS 43.23.005(a) provides as part of the eligibility requirements for a permanent fund dividend that the individual be a state resident. "Residency" is established when an individual is physically present in the state "with the intent to remain in the state indefinitely and to make a home in the state." AS 01.10.055(a). Since residency depends on the state of mind of the individual, it is difficult to see how an agency could defend its "belief" that the individual is a resident, should the belief be challenged by the individual himself. Although it is unlikely that many will make such a challenge, since the only negative consequence of the agency's actions will be an increased tax liability and the individual will gain an even larger debt write-off, such a challenge is certainly plausible, and if made, the agency's position would likely be indefensible.

We also note a few other practical questions raised by the bill. The bill fails to mention what procedures to use if the agency's claim is for less than the full amount of the dividend. In that case, is the entire check sent to the agency, or should the Department of Revenue issue separate checks to both the individual and the agency? Also, the bill provides that the Commissioner of the Department of Revenue must notify the individual that the execution has occurred. In addition to increasing the Department of Revenue's administrative costs, this procedure may cause an individual who wishes to challenge the action to believe that his challenge should be made through the administrative processes at the Department of Revenue. We believe it would be more appropriate for the agency making the claim to defend against any challenge, and we would therefore recommend that the bill be amended to add an additional section specifying that any challenge to the execution should be made to the agency making the claim.

Finally, we believe sec. 5 of the bill should be clarified. The reference to AS 09.38.085 should also include a reference to AS 09.38.075(b) and AS 09.38.080(c). Further, it appears that the final two sentences being added to AS 43.23.-065(a) refer only to situations where the court is the creditor.

The Hon. C. E. Swackhammer
Alaska State House
File No.: 663-87-0446

April 2, 1987
Page 4

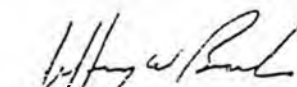
If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

We hope this answers your questions.

Sincerely,

GRACE BERG SCHAIBLE
ACTING ATTORNEY GENERAL

By:


Jeffrey W. Bush
Assistant Attorney General

JWB:lb

cc: Ervin Jones, Director
Administrative Services
Department of Revenue

Arthur V. Peterson, AAG
Department of Law

L.S. (Dusty) Rhodes
10446 Chatanika Loop
Eagle River, AK 99577

April 27, 1987

Representative Fran Ulmer
P.O. Box V
Juneau, AK 99811

Dear Representative Ulmer:

I'm going to have a tough time getting anyone to listen, but I have to try. HB13 and SB177, the proposal to use prisoners' dividend funds for something other than giving it to the prisoner, is wrong. Maybe wrong is the wrong word; how about unjust since everyone talks about being just.

First, the "sentence" imposed by the court did not say five years and \$5,000. plus your permanent fund dividend for the next five years. Secondly, the sentence imposed did not say 5 years and \$5,000. plus whatever expenses the State incurs in keeping you in prison. Third, the sentence imposed varied from individual to individual, depending on the crime committed. Let's say Sam is serving ten years for breaking into a ladie's home and raping her; Joe is serving a five-year term for driving drunk, causing an accident in which someone was seriously hurt; Jim is serving a two-year term for shoplifting an \$8,000. Rolex watch. The sentence imposed was different but is now amended by HB13 and SB177 to say they each give up their permanent fund dividend. Fourth, the legislature keeps getting into the judicial process further and further. Whatever happended to "separation of powers" theory? We have presumptive sentences, which I doubt you could get one judge in the United States to agree with, dictated by the legislative action. Now the legislative branch wants to dictate monetary penalties (that is exactly what HB13 and SB177 will do.

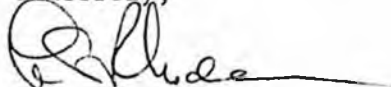
I would also wager that not more than 10 House or Senate members voting on this bill have ever visited one of our correctional facilities for more than "a guided tour". For example, what percentage of the inmates have families that bring them needd items, i.e. underwear, shirts, pants, shoes, socks, hairbrushes, deodorant, and the other things we use in our daily lives? What percentage of the inmates have more than a few dollars in their accounts to buy these things, plus cigarettes, treats, sodas, etc., on the approximately 50 cents per hour they make while in prison? What percentage of the prisoners are still wearing the same clothes they came in with? The answer to those questions should be disturbing if you knew the truth. Contrary to what you may have been told, the facility I am familiar with doesn't provide any of those things - the inmates must purchase them from the Company Store. Inmates are not allowed to borrow each other's clothes, even for a short period of time, while they wash and dry the ones they had

on. In many, many, many cases the dividend check is the year-round source of income to provide these necessities. Finally, the hope of many of these inmates is to have enough saved when they do get released to get a place to live and a means of transportation. The approximately 50 cents per hour they earn will never amount to (1) a months rent in advance (2) a deposit on the electric/telephone bill (3) the second-hand "junkie" with minimum insurance to get back and forth to work. The dividend at least gives them hope.

Finally, just how much "justice" do we want? Too many of us who have never committed a crime seem to think the criminal deserves everything bad we can dish out. Prison, the loss of freedom, is only one of the penalties a criminal must pay. A felon loses his/her citizenship rights - many job opportunities are closed to them for a lifetime because of bonding requirements - many friends and relatives no longer will socialize with 'hem - families are separated and sometimes permanently divided (especially where children are concerned) - and certainly the criminal is financially reduced to ruin with legal costs and fines assessed before prison begins. The power to dig in one more time - to deliver one more punishment - is just too great for some people to leave alone! Besides, who cares what happens to the prisoner? Even if they complain, who cares? They deserve what they get - right?

Well, I say it's WRONG and I hope someone listens!

Sincerely,



L.S. (Dusty) Rhodes

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	1-14-88	1:30p.m.
H. JUD.	1-13-88	1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/5/87

FURTHER REFERRALS: Finance

DATE: 1-14-88

The Judiciary Committee has considered HB 223

"An Act relating to permanent fund dividends; and providing for an effective date."

RECOMMENDS:

replace with CS HB 223 (Jud) the same title

attached amendment(s) a new title

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

fiscal impact

zero fiscal note

zero with analysis

same as previous fiscal note published _____

same as previous zero fiscal note published _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]

[Signature]
Chairman's signature

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of
7 debt owed to state agencies and courts involving
8 permanent fund dividends, to assignments of divi-
9 dends, and to the exemption for dividends; amending
10 Alaska Rule of Civil Procedure 69; and providing for
11 an effective date."

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

13 * Section 1. AS 09.38.015(a) is amended to read:

14 (a) An individual is entitled to exemption of the following
15 property:

16 (1) a burial plot for the individual and the individual's
17 family;

18 (2) health aids reasonably necessary to enable the indi-
19 vidual or a dependent to work or to sustain health;

20 (3) benefits paid or payable for medical, surgical, or
21 hospital care to the extent they are or will be used to pay for the
22 care;

23 (4) an award under AS 18.67 (Violent Crimes Compensation
24 Board) or a crime victim's reparations Act of another jurisdiction;

25 (5) benefits paid or payable as a longevity bonus under
26 AS 47.45;

27 (6) compensation or benefits paid or payable and exempt
28 under federal law;

29 (7) liquor licenses granted under AS 04;

1 (8) limited entry permits granted under AS 16.43, except as
2 provided in that chapter;

3 (9) that portion of a permanent fund dividend exempted
4 under AS 43.23.065(a).

5 * Sec. 2. AS 09.38.030(b) is amended to read:

6 (b) An individual who does not receive earnings either weekly,
7 semi-monthly or monthly is entitled to a maximum exemption for the
8 aggregate value of cash and other liquid assets available in any month
9 of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The
10 term "liquid assets" includes deposits, securities, notes, drafts,
11 accrued vacation pay, refunds, prepayments, and receivables.

12 * Sec. 3. AS 09.38.065(a) is amended to read:

13 (a) Notwithstanding other provisions of this chapter,

14 (1) a creditor may make a levy against exempt property of
15 any kind, except property exempted under AS 43.23.065(a), to enforce a
16 claim for

17 (A) child support;

18 (B) unpaid earnings of up to one month's compensation
19 or the full-time equivalent of one month's compensation for
20 personal services of an employee; or

21 (C) state or local taxes; and

22 (2) a creditor may make a levy against exempt property to
23 enforce a claim for

24 (A) the purchase price of the property or a loan made
25 for the express purpose of enabling an individual to purchase the
26 property and used for that purpose;

27 (B) labor or materials furnished to make, repair,
28 improve, preserve, store, or transport the property; and

29 (C) a special assessment imposed to defray costs of a

1 public improvement benefiting the property.

2 * Sec. 4. AS 43.23.065(a) is amended to read:

3 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS
4 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to
5 an individual is exempt from levy, execution, garnishment, attachment,
6 or any other remedy for the collection of debt. This exemption ap-
7 plies to an eligible individual's permanent fund dividend both before
8 and after payment is made to the individual. No other exemption
9 applies to a dividend. The commissioner shall include the case name
10 and number with a dividend delivered to the court in accordance with a
11 writ of execution. An exemption is not available under this subsec-
12 tion for permanent fund dividends taken to satisfy child support
13 obligations required by court order or decision of the child support
14 enforcement agency under AS 47.23.140 - 47.23.220.

15 * Sec. 5. AS 43.23.065(b) is amended to read:

16 (b) The following claims, or voluntary assignments of dividends
17 in payment or partial payment of the claims, have priority in the
18 order listed over other claims on permanent fund dividends: [AN
19 EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR PERMANENT FUND
20 DIVIDENDS TAKEN TO SATISFY]

21 (1) child support obligations required by court order or
22 decision of the child support enforcement agency under AS 47.23.140 -
23 47.23.220;

24 (2) court ordered restitution under AS 12.55.045 - 12.55.-
25 051 or 12.55.100;

26 (3) a court ordered fine;

27 (4) a court ordered probation fee under AS 12.55.105; or

28 (5) [(4)] a debt owed by an eligible individual to an
29 agency of the state or state court, unless the debt is contested and

1 an appeal is pending, or the time limit for filing an appeal has not
2 expired.

3 * Sec. 6. AS 43.23.067 is amended to read:

4 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED
5 SCHOLARSHIP LOANS]. (a) AS 09.38 does not apply to permanent fund
6 dividends taken to satisfy debts listed under AS 43.23.065(b) for
7 which payments are at least 45 days overdue [AS 14.43.120(i)]. Not-
8 withstanding AS 09.35, execution on a claim to satisfy a debt listed
9 under AS 43.23.065(b) for which payments are at least 45 days overdue
10 may be [AS 14.43.120(i) IS] accomplished by delivering a [CERTIFIED]
11 claim to the department containing the following information:

12 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual
13 whose dividend is being claimed and sufficient information to identify
14 the individual;

15 (2) the amount the individual owes to the agency of the
16 state or state court [ON THE SCHOLARSHIP LOAN]; [AND]

17 (3) a statement of the basis for the claim, including the
18 date payment on the debt became due; and

19 (4) a statement that

20 (A) if the debt has not been contested, the individual
21 has had notice of the debt and an opportunity to contest, or, if
22 contested, that the issue has been resolved in favor of the
23 agency or court [ALASKA COMMISSION ON POSTSECONDARY EDUCATION];
24 and

25 (B) if the debt has been contested and resolved in
26 favor of the agency or court [ALASKA COMMISSION ON POSTSECONDARY
27 EDUCATION], no appeal is pending, the time limit for filing an
28 appeal has expired, or the appeal has been resolved in favor of
29 the agency or court [COMMISSION].

1 (b) Upon receipt of a claim under (a) of this section the de-
2 partment shall send notice [NOTIFY THE INDIVIDUAL OF THE CLAIM. THE
3 NOTICE SHALL BE SENT] to the address provided in the individual's
4 permanent fund dividend application that contains [AND MUST PROVIDE]
5 the following information:

6 (1) the identity of the agency or court making the claim;

7 (2) the amount of the claim; [AND]

8 (3) a statement of the basis for the claim, including the
9 date payment on the debt became due; and

10 (4) [(2)] notice that the amount of the permanent fund
11 dividend that does not exceed the amount of the claim, after deducting
12 the exemption under AS 43.23.065(a), will [SHALL] be paid to the
13 agency or court [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] unless
14 the agency or court [COMMISSION] releases the claim or the individual
15 requests a hearing on the validity of the claim from the agency or
16 court making the claim within 45 [30] days after the date the notice
17 is sent by the department.

18 (c) If a hearing is requested by an individual, the agency or
19 court making the claim shall notify the department. The agency or
20 court making the claim is responsible for affording the individual a
21 hearing on the validity of the claim and notice of any appeal rights
22 the individual may have. A hearing is not required under this sub-
23 section on the validity of the debt that forms the basis for the claim
24 if the individual has already been provided an opportunity for a
25 hearing on that issue. If no notice of a request for a hearing or
26 release of the claim is received by the department from the agency or
27 court [AS 44.62.330 - 44.62.630 APPLY TO A HEARING REQUESTED BY AN
28 INDIVIDUAL UNDER (b)(2) OF THIS SECTION. IF A REQUEST FOR A HEARING
29 IS NOT RECEIVED BY THE DEPARTMENT WITHIN THE REQUIRED TIME LIMIT], the

1 department shall pay to the agency or court [ALASKA COMMISSION ON
2 POSTSECONDARY EDUCATION] the amount of the permanent fund dividend
3 that does not exceed the amount of the claim, after deducting the
4 exemption under AS 43.23.065(a). The commissioner shall include the
5 case name and number with a payment to the court.

6 * Sec. 7. AS 43.23 is amended by adding a new section to read:

7 Sec. 43.23.068. ADMINISTRATIVE COSTS. The department shall
8 charge the claimant or assignor for costs of processing a claim on or
9 assignment of a permanent fund dividend. Fees under this section
10 shall be established by regulation at levels that cover the adminis-
11 trative costs of processing all claims and assignments. The commis-
12 sioner of administration shall separately account for receipts depos-
13 ited in the general fund by the department under this section. The
14 department shall submit to the legislature a request for an appro-
15 priation of the receipts for the costs of processing claims and as-
16 signments each year.

17 * Sec. ^[7] 8. AS 43.23.067, as amended by sec. 6 of this Act, has the
18 effect of amending Alaska Rule of Civil Procedure 69 by authorizing agen-
19 cies of the state and state courts to execute on permanent fund dividends
20 in certain cases without using the execution procedures provided in that
21 rule.

22 * Sec. ^[8] 9. AS 43.23.065(c) is repealed.

23 * Sec. ^[9] 10. This Act takes effect ^{immediately under AS 10.} April 1, 1989.

Adopted

5-0686P
Cook
1/13/88

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of
7 debt involving permanent fund dividends and to the
8 exemption for dividends; amending Alaska Rule of
9 Civil Procedure 69; and providing for an effective
10 date."

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

12 * Section 1. AS 43.23.065(a) is amended to read:

13 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS
14 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to
15 an individual is exempt from levy, execution, garnishment, attachment,
16 or any other remedy for the collection of debt. This exemption ap-
17 plies to an eligible individual's permanent fund dividend both before
18 and after payment is made to the individual. Notwithstanding
19 AS 09.38, no other exemption applies to a dividend. The commissioner
20 shall include the case name and number with a dividend delivered to
21 the court in accordance with a writ of execution.

22 * Sec. 2. AS 43.23.065(b) is amended to read:

23 (b) The following claims, or voluntary assignments of dividends
24 in payment or partial payment of the claims, have priority in the
25 order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER
26 THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

27 (1) child support obligations required by court order or
28 decision of the child support enforcement agency under AS 47.23.140 -
29 47.23.220;

1 (2) court ordered restitution under AS 12.55.045 - 12.55.-
2 051 or 12.55.100;

3 (3) a court ordered fine;

4 (4) a court ordered probation fee under AS 12.55.105; or

5 (5) [(4)] a debt owed by an eligible individual to an
6 agency of the state, state court, or municipality unless the debt is
7 contested and an appeal is pending, or the time limit for filing an
8 appeal has not expired.

9 * Sec. 3. AS 43.23.067 is amended to read:

10 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED
11 SCHOLARSHIP LOANS]. (a) AS 09.38 does not apply to permanent fund
12 dividends taken to satisfy debts listed under AS 43.23.065(b) [AS 14.-
13 43.120(i)]. Notwithstanding AS 09.35, execution on a claim to satisfy
14 a debt listed under AS 43.23.065(b) [AS 14.43.120(i)] is accomplished
15 by delivering a [CERTIFIED] claim to the department containing the
16 following information:

17 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual
18 whose dividend is being claimed and sufficient information to identify
19 the individual;

20 (2) the amount the individual owes to the agency of the
21 state, court, or municipality [ON THE SCHOLARSHIP LOAN]; [AND]

22 (3) a statement of the basis for the claim; and

23 (4) a statement that

24 (A) if the debt has not been contested, the individual
25 has had notice of the debt and an opportunity to contest, or, if
26 contested, that the issue has been resolved in favor of the
27 agency, court, or municipality [ALASKA COMMISSION ON POSTSECOND-
28 ARY EDUCATION]; and

29 (B) the debt has been contested and resolved in

1 favor of the agency, court, or municipality [ALASKA COMMISSION ON
2 POSTSECONDARY EDUCATION], no appeal is pending, the time limit
3 for filing an appeal has expired, or the appeal has been resolved
4 in favor of the agency, court, or municipality [COMMISSION].

5 (b) Upon receipt of a claim under (a) of this section the de-
6 partment shall send notice [NOTIFY THE INDIVIDUAL OF THE CLAIM. THE
7 NOTICE SHALL BE SENT] to the address provided in the individual's
8 permanent fund dividend application that contains [AND MUST PROVIDE]
9 the following information:

10 (1) the identity of the agency, court, or municipality
11 making the claim;

12 (2) the amount of the claim; [AND]

13 (3) a statement of the basis for the claim; and

14 (4) [(2)] notice that the amount of the permanent fund
15 dividend that does not exceed the amount of the claim, after deducting
16 the exemption under AS 43.23.065(a), will [SHALL] be paid to the
17 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY
18 EDUCATION] unless the agency, court, or municipality [COMMISSION]
19 releases the claim or the individual requests a hearing on the validi-
20 ty of the claim from the agency, court, or municipality making the
21 claim within 30 days after the date the notice is sent by the depart-
22 ment.

23 (c) If a hearing is requested by an individual, the agency,
24 court, or municipality making the claim shall notify the department.
25 The agency, court, or municipality making the claim is responsible for
26 affording the individual a hearing on the validity of the claim and
27 notice of any appeal rights the individual may have. A hearing is not
28 required under this subsection on the validity of the debt that forms
29 the basis for the claim. If no notice of a request for a hearing or

1 release of the claim is received by the department from the agency,
2 court, or municipality [AS 44.62.330 - 44.62.630 APPLY TO A HEARING
3 REQUESTED BY AN INDIVIDUAL UNDER (b)(2) OF THIS SECTION. IF A REQUEST
4 FOR A HEARING IS NOT RECEIVED BY THE DEPARTMENT WITHIN THE REQUIRED
5 TIME LIMIT], the department shall pay to the agency, court, or munic-
6 ipality [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] the amount of
7 the permanent fund dividend that does not exceed the amount of the
8 claim, after deducting the exemption under AS 43.23.065(a). The
9 commissioner shall include the case name and number with a payment to
10 the court.

11 * Sec. 4. AS 43.23.067, as amended by sec. 3 of this Act, has the
12 effect of amending Alaska Rule of Civil Procedure 69 by authorizing
13 agencies of the state, state courts, and municipalities to execute on
14 permanent fund dividends without using the execution procedures provided in
15 that rule.

16 * Sec. 5. AS 43.23.065(c) is repealed.

17 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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Adopted
AMENDMENT #3

Swack

Offered in the HOUSE

~~By Swackhammer~~

TO: CSHB 223 (Judiciary)

Page 2, line 12, after "43.23.065(b)":

Insert "for which payments are at least 45 days overdue"

Page 2, line 14, after "43.23.065(b)":

Insert "for which payment is at least 45 days overdue"

Page 2, line 22, after "claim":

Insert ", including the date payment on the debt became due"

Page 3, line 13, after "claim":

Insert ", including the date payment on the debt became due"

Page 4, line 14, after "dividends":

Insert "in certain cases"

Adopted
~~Withdrawn~~

A M E N D M E N T

#1

Offered in the HOUSE

By Swackhammer

TO: CSHB 223 (Judiciary)

Page 2, line 6:

Delete "state court, or municipality"

After "state" insert "or state court"

Page 2, line 21:

Delete ", court, or municipality"

Insert "or state court"

Page 2, line 27:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 1:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 4:

Delete ", court. or municipality"

Insert "or court"

Page 3, line 10:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 17:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 18:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 20:

Delete ", court, or municipality"

Insert "or court"

Page 3, lines 23 and 24:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 25:

Delete ", court, or municipality"

Insert "or court"

Page 4, lines 1 and 2:

Delete ", court, or municipality"

Insert "or municipality"