

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5077 HSTA HB 217 - HB 223

499

go1397hL
Cook
2/29/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 217 (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 purchase ^[foreign] of investments by the
7 board of trustees of the Alaska permanent fund."

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

9 * Section 1. AS 37.13.120(g)(8) is amended to read:

10 (8) domestic corporate debt securities that [WHICH] are
11 rated AA or better by a nationally recognized rating service, or
12 foreign corporate debt securities of comparable quality;

13 * Sec. 2. AS 37.13.120(g)(19) is amended to read:

14 (19) certificates of deposit, term deposits, or bankers'
15 acceptances, which are issued by a United States or foreign bank or
16 trust company located in a foreign country and are denominated in
17 United States or foreign currency, if either (A) they may be readily
18 sold in a secondary market at prices reflecting fair value, or (B) the
19 issuing bank or trust company has capital, [AND] surplus, and retained
20 earnings at the date of issue equaling at least ^[100,000,000] \$500,000,000; invest-
21 ments made under this paragraph are not subject to the collateral
22 requirements for domestic certificates under (m) of this section;

23 * Sec. 3. AS 37.13.120(g) is amended by adding a new paragraph to read:

24 (21) securities of foreign governments, foreign govern-
25 mental agencies, and foreign corporations the principal of which is,
26 or the interest or dividends on which are, payable in either United
27 States dollars or foreign currencies.

28 * Sec. 4. AS 37.13.120(h) is amended to read:

29 (h) The board may enter into future contracts for the sale of

1 investments purchased under (g) of this section, or for the sale of
 2 foreign currencies, only for the purpose of hedging an existing equiv-
 3 alent ownership position in these investments)SECURITIES].

4 * Sec. 5. AS 37.13.120(i) is amended to read:

5 (i) [A THE TIME OF EACH INVESTMENT, THE AGGREGATE INVESTMENT OF
 6 THE ALASKA PERMANENT FUND IN EACH STATED CATEGORY OF INVESTMENT MAY
 7 NOT EXCEED THE FOLLOWING STATED PERCENTAGE OF THE TOTAL INVESTMENTS OF
 8 THE FUND: MORTGAGES UNDER (g)(16) OF THIS SECTION, 15 PERCENT; REAL
 9 ESTATE INVESTMENTS UNDER (g)(20) OF THIS SECTION, 15 PERCENT; FOREIGN
 10 CERTIFICATES OF DEPOSIT, ^[foreign term deposits & foreign bankers' acceptances] OR THE EQUIVALENT UNDER (g)(19) OF THIS SEC-
 11 TION, ^[Securities of foreign govts, municipalities & corps.] 20 PERCENT; [^] CORPORATE STOCKS AND DEBT SECURITIES UNDER (g)(8),
 12 (9), AND (18) OF THIS SECTION, 50 PERCENT.] The Alaska permanent fund
 13 may at no time own more than five percent of the voting stock of a
 14 corporation. Domestic stocks, except for bank and insurance company
 15 stocks, must be listed at the date of purchase on an exchange regis-
 16 tered with the Securities and Exchange Commission. At the time of
 17 each investment the aggregate investment of the fund in each stated
 18 category of investment may not exceed the following stated percentage
 19 of the total investments of the fund:

20 (1) mortgages under (g)(16) of this section - 15 percent;

21 (2) real estate investments under (g)(20) of this section -
 22 15 percent;

23 (3) foreign certificates of deposit, foreign term deposits,
 24 and foreign bankers' acceptances under (g)(19) of this section, and
 25 securities of foreign governments, foreign governmental agencies, and
 26 foreign corporations under (g)(8) and (21) of this section - 20 per-
 27 cent;

28 (4) domestic corporate stocks and debt securities under
 29 (g)(8), (9), and (18) of this section - 50 percent.



Alaska Permanent Fund Corporation

Pouch 4-1000 Juneau, Alaska 99802

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

April 13, 1987

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

Dear Representative Ulmer:

I am writing to request that you schedule House Bill No. 217, "An Act relating to purchase of foreign investments by the board of trustees of the Alaska permanent fund."

This bill is supported by the board of trustees of the Alaska Permanent Fund Corporation. It was originally recommended by the Trustees on September 26, 1986 (see Board Resolution 86-13 attached). Since the Board membership at that time was quite a bit different than at present, the bill was discussed again at the most recent Board meeting on March 9, 1987, and the original recommendation for passage of this bill still stands.

We think it is important for the legislature to expand the Fund's authorized list of investments to include foreign securities, and we look forward to testifying in support of this bill at your earliest convenience. Staff will be providing your committee with back-up material on this bill in particular and global investing in general.

Thank you.

With warm regards,

David A. Rose
Executive Director

Attachment

RESOLUTION OF THE BOARD OF TRUSTEES
THE ALASKA PERMANENT FUND CORPORATION
REGARDING INVESTMENTS IN FOREIGN SECURITIES

RESOLUTION 86-13

WHEREAS, returns from foreign investment have exceeded those in the United States over most recent ten year periods; and

WHEREAS, the United States represents less than one-half of the world's equity capitalization and is declining in share as foreign economies experience more rapid long-term growth; and

WHEREAS, equity participation in many emerging and fast growth industries can only be attained through foreign investment; and;

WHEREAS, foreign securities markets exhibit a low correlation with the U.S. market therefore reduced overall portfolio volatility will result from international investments; and

WHEREAS, no one national market consistently produces superior or inferior returns; and

WHEREAS, combining U.S. and international investments has consistently provided both increased return and reduced risk compared to a portfolio of all U.S. equities; and


WHEREAS, growth in the U.S. economy remains slow while many foreign economies enjoy more rapid and accelerating growth; and

WHEREAS, increased disposable income and low inflation abroad is spurring consumer demand and domestic growth; and

WHEREAS, a continuation of the dollar's gradual descent will enhance U.S. investors' total return from foreign security holdings;


NOW THEREFORE BE IT RESOLVED that the Board of Trustees recommend that the State of Alaska Legislature consider and adopt legislation permitting purchase of foreign securities similar in content to the suggested Bill attached hereto as Appendix A.

PASSED AND APPROVED by the Board of Trustees of the Alaska Permanent Fund Corporation, this 26th day of September, 1986.



Clyde M. Sherwood, Chairman
Board of Trustees
Alaska Permanent Fund Corporation

ATTEST:



David A. Rose, Executive Director

ALASKA PERMANENT FUND CORPORATION
BOARD OF TRUSTEES

APPENDIX A TO RESOLUTION 86-13
INVESTMENTS IN FOREIGN SECURITIES

A BILL

For an Act entitled: "An Act relating to purchase of foreign securities by the Alaska permanent fund."

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

* Section 1. AS 37.13.120(g) (8) is amended to read:

(8) domestic corporate debt securities which are rated AA or better by a nationally recognized rating service, or foreign corporate debt securities of comparable quality;

* Sec. 2. AS 37.13.120(g) (19) is amended to read:

(19) certificates of deposit, term deposits, or bankers' acceptances, which are issued by a United States or foreign bank or trust company located in a foreign country and are denominated in United States or foreign currency, if either (A) they may be readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust company has capital and surplus at the date of issue equaling at least \$100,000,000 (\$500,000,000); investments made under this paragraph are not subject to the collateral requirements for domestic certificates under (m) of this section;

* Sec. 3. AS 37.13.120(g) is amended by adding a new paragraph to read:

(21) securities of foreign governments, foreign governmental agencies, and foreign corporations the principal of which is, or the interest or dividends on which are, payable in either United States dollars or foreign currencies.

* Sec. 4. AS 37.13.120(h) is amended to read:

(h) The board may enter into future contracts for the sale of investments purchased under (g) of this section, or for the sale of foreign currencies, only for the purpose of hedging an existing equivalent ownership position in these investments [SECURITIES].

* Sec. 5. AS 37.13.120(i) is amended to read:

(i) At the time of each investment, the aggregate investment of the Alaska permanent fund in each stated category of investment may not exceed the following stated percentage of the total investments of the fund: mortgages under (g)(16) of this section, 1 percent; real estate investments under (g)(20) of this section, 15 percent; foreign certificates of deposit, foreign term deposits, and foreign bankers' acceptances [OR THE EQUIVALENT] under (g)(19) of this section, 20 percent; securities of foreign governments, foreign governmental agencies, and foreign corporations under (a)(8) and (21) of this section, 20 percent; domestic corporate stocks and debt securities under (g)(8), (9), and (18) of this section, 50 percent. The Alaska permanent fund may at no time own more than five percent of the voting stock of a corporation. Domestic stocks, except for bank and insurance company stocks, must be listed at the date of purchase on an exchange registered with the Securities and Exchange Commission.

STEVE COWPEE
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3

March 25, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the purchase of foreign investments by the board of trustees of the Alaska Permanent Fund. The bill specifically permits the purchase of foreign securities by the board.

Returns from foreign investment have exceeded those from investments in the United States over most recent 10-year periods. In addition, the United States represents less than one-half of the world's equity capitalization, and that share is declining as foreign economies experience more rapid long-term growth. No one national market consistently produces superior or inferior returns, and foreign securities markets exhibit a low correlation with the U.S. market. Consequently, the ability to invest in those foreign securities will reduce overall portfolio risk while providing an increased return when compared to a portfolio of solely U.S. equities.

In sec. 2 of the bill, capital and surplus requirements are reduced in recognition of different international accounting conventions. For example, it has been reported in Barron's National Business and Financial Weekly that, if U.S. regulators required U.S. banks to establish a modest 10 percent reserve against their loans to the six major Latin American debtors, it would cost Chase Manhattan Bank \$4.82 a share this year and Manufacturers Hanover Trust Co. more than twice that amount. On the other hand, some German banks reserve more than 30 percent against lesser-developed-country loans. If we were to require \$500,000,000 in capital and surplus of all foreign banks,

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTEBill Version: HB 217
Publish Date: 3/27/87

REQUEST

Bill/Resolution No: _____
Title: An Act relating to purchase of
foreign securities by PFCSponsor: Rules
Requestor: Governor
Date of Request: March 12, 1987

FISCAL DETAIL

Agency Affected: Revenue
BRU: Permanent Fund CorporationComponents: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	35.0	500.0	500.0	500.0	500.0
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	35.0	500.0	500.0	500.0	500.0
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	35.0	500.0	500.0	500.0	500.0
TOTAL	-	35.0	500.0	500.0	500.0	500.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

FY 88 - Contractual for Manager Search

FY 89 - FY 92 Management Fees

Prepared By: Poyce Weller by request of PFC
Division: Office of the CommissionerPhone: 465-2300
Date: March 12, 1987Approved by Commissioner: Hugh Malone
Agency: Department of RevenueDate: 3/12/87

Distribution (by Agency preparing fiscal note):

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

CORRECTION

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

3

March 25, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the purchase of foreign investments by the board of trustees of the Alaska Permanent Fund. The bill specifically permits the purchase of foreign securities by the board.

Returns from foreign investment have exceeded those from investments in the United States over most recent 10-year periods. In addition, the United States represents less than one-half of the world's equity capitalization, and that share is declining as foreign economies experience more rapid long-term growth. No one national market consistently produces superior or inferior returns, and foreign securities markets exhibit a low correlation with the U.S. market. Consequently, the ability to invest in those foreign securities will reduce overall portfolio risk while providing an increased return when compared to a portfolio of solely U.S. equities.


In sec. 2 of the bill, capital and surplus requirements are reduced in recognition of different international accounting conventions. For example, it has been reported in Barron's National Business and Financial Weekly that, if U.S. regulators required U.S. banks to establish a modest 10 percent reserve against their loans to the six major Latin American debtors, it would cost Chase Manhattan Bank \$4.82 a share this year and Manufacturers Hanover Trust Co. more than twice that amount. On the other hand, some German banks reserve more than 30 percent against lesser-developed-country loans. If we were to require \$500,000,000 in capital and surplus of all foreign banks,

Hon. Ben Grussendorf

Page 2

we might be forced to eliminate investments in banks with smaller reported capital but very large unreported reserves, which might make them some of the safest banks in the world.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTEBill Version: HB 217
Publish Date: 3/27/87

REQUEST

Bill/Resolution No: _____
Title: An Act relating to purchase of
foreign securities by PFCSponsor: Rules
Requestor: Governor
Date of Request: March 12, 1987

FISCAL DETAIL

Agency Affected: Revenue
BRU: Permanent Fund CorporationComponents: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	35.0	500.0	500.0	500.0	500.0
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	35.0	500.0	500.0	500.0	500.0
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	35.0	500.0	500.0	500.0	500.0
TOTAL	-	35.0	500.0	500.0	500.0	500.0

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

FY 88 - Contractual for Manager Search

FY 89 - FY 92 Management Fees

Prepared By: Poyce Weller by request of PFCDivision: Office of the CommissionerPhone: 465-2300Date: March 12, 1987Approved by Commissioner: Hugh MaloneAgency: Department of RevenueDate: 3/12/87

Distribution (by Agency preparing fiscal note):

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

H B

2 2 0



Official Business

Alaska State Legislature

House

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

STATE AFFAIRS COMMITTEE

HOUSE BILL 220

FILE CONTENTS

1. HB 220: AN ACT RELATING TO LEGISLATIVE PER DIEM; AND PROVIDING FOR AN EFFECTIVE DATE
2. MEMORANDUM FROM REPRESENTATIVE FRAN ULMER TO SENATOR DON BENNETT, DATED FEBRUARY 17, 1987, AND ATTACHMENTS
3. MEMORANDUM FROM TERESA CRAMER TO REPRESENTATIVE FRAN ULMER, DATED APRIL 14, 1987

FISCAL NOTE

- A. LEGISLATIVE AFFAIRS AGENCY, LEGISLATIVE COUNCIL, LEGISLATIVE LEADERSHIP, SESSION EXPENSES: \$119.2 IN FY 88

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/27/87

FURTHER REFERRALS: Finance

DATE: 4-15-87

The State Affairs Committee has considered HB 220

"An Act relating to legislative per diem; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 220 (SA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: 4/16/87 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

SIGNING DO PASS:

Pat Boucher WITH LTR OF INTENT
ON USE OF TELECOMMUNICATION

Scott M...

Alan ...

SIGNING OTHER RECOMMENDATIONS:

David Douley NO REC

Larry Martin No Rec

[Signature]
Chairman's signature

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2

HOUSE BILL NO. 220

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 legislative per diem; and provid-
ing for an effective date."

7

8

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

9

* Section 1. AS 24.10.105(b) is amended to read:

10

(b) A legislator is entitled to receive per diem at the short-
term rate

11

12

(1) for the 10 days before, the 10 days after and each day
of [DURING] a legislative session if the legislator is not living in
the legislator's place of permanent residence during the session;
[AND]

13

14

15

16

(2) during the period of time not included in (1) of this
subsection, while on committee business [or other] legislative business
in a place that is not the legislator's place of permanent residence;
and

17

18

19

20

(3) during the 10 days before and the 10 days after a
legislative session while engaged in committee business [or other
legislative business] in a place that is not the legislator's place of
permanent residence if the legislator is living in the legislator's
place of permanent residence during the session.

21

22

23

24

25

* Sec. 2. AS 24.10.105(c) is amended to read:

26

(c) A legislator is entitled to receive per diem at the long-
term rate

27

28

(1) for the 10 days before, the 10 days after, and each day
of [DURING] a legislative session if the legislator is living in the

29

Rest of below + AS 24.10.105

1 legislator's place of permanent residence during the session unless
2 the legislator received per diem at the short-term rate under (b)(3)
3 of this section for that day; and

4 (2) during the period of time not included in (1) of this
5 subsection, while engaged in committee business or other legislative
6 business at the legislator's place of permanent residence.

7 * Sec. 3. AS 24.10.105 is amended by adding a new subsection to read:

8 (e) In addition to receiving per diem under (b) or (c) of this
9 section, a legislator is entitled to reimbursement for actual expenses
10 for transportation, food, and lodging when away from Juneau on legis-
11 lative business during the legislative session if the trip is author-
12 ized by the president of the senate or the speaker of the house of
13 representatives, as appropriate. However, a legislator may not re-
14 ceive reimbursement for an item that is greater than \$10 unless the
15 legislator presents a receipt for the expense or, if the receipt is
16 unavailable, a written explanation for the failure to present the
17 receipt.

18 * Sec. 4 This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Legislature

House

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

STATE AFFAIRS COMMITTEE

LETTER OF INTENT

HOUSE BILL 220

APRIL 16, 1987

Committee Substitute for House Bill 220 (State Affairs) makes modifications to legislative per diem. It is the intent of the House State Affairs Committee that interim per diem expenses be kept to a minimum through the use of teleconference committee hearings. AS 44.62.310(a) allows for meetings of committees by teleconference and for a roll call vote during such meetings.

A handwritten signature in cursive script, reading "Fran Ulmer".

Fran Ulmer, Chair
House State Affairs Committee

Original sponsor: Rules/Legislative Council

Handwritten notes on the left margin: "Katie Kessie" and "Katie Kessie" written vertically.

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 220 (State Affairs)
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 legislative per diem; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 24.10.105(b) is amended to read:

10 (b) A legislator is entitled to receive per diem at the short-
11 term rate

12 (1) during a legislative session if the legislator is not
13 living in the legislator's place of permanent residence during the
14 session; and

15 (2) during the period of time not included in (1) of this
16 subsection, while on committee business [OR OTHER LEGISLATIVE BUSI-
17 NESS] in a place that is not the legislator's place of permanent
18 residence.

Handwritten notes on the left margin: "Duo" and "committee" written vertically, with a bracket pointing to the subsection (2) text.

19 * Sec. 2. AS 24.10.105(c) is amended to read:

20 (c) A legislator is entitled to receive per diem at the long-
21 term rate

22 (1) during a legislative session if the legislator is
23 living in the legislator's place of permanent residence during the
24 session unless the legislator received per diem at the short-term rate
25 under (f) of this section for that day; and

26 (2) during the period of time not included in (1) of this
27 subsection, while engaged in committee business [OR OTHER LEGISLATIVE
28 BUSINESS] at the legislator's place of permanent residence.

29 * Sec. 3. AS 24.10.105 is amended by adding new subsections to read:

1 (e) In addition to receiving per diem under (b) or (c) of this
2 section, a legislator is entitled to reimbursement for actual expenses
3 for transportation, food, and lodging when away from Juneau on legis-
4 lative business during the legislative session if the trip is author-
5 ized by the president of the senate or the speaker of the house of
6 representatives, as appropriate. However, a legislator may not re-
7 ceive reimbursement for an item that is greater than \$10 unless the
8 legislator presents a receipt for the expense or, if the receipt is
9 unavailable, a written explanation for the failure to present the
10 receipt.

11 (f) A legislator who is not living in the legislator's place of
12 permanent residence during the session is entitled to per diem at the
13 short-term rate during the five days before and the five days after
14 the legislative session for the days that the legislator is

15 (1) traveling between Juneau and the legislator's place of
16 permanent residence; or

17 (2) setting up or concluding household arrangements for the
18 legislative session.

19 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
20
21
22
23
24
25
26
27
28
29

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

3
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

April 14, 1987

SUBJECT: Legislative per diem (HB 220)

TO: Representative Fran Ulmer
Chair, House State Affairs Committee

FROM: Teresa B. Cramer *JBC*
Legislative Counsel

You have requested language to permit legislators to claim per diem before a legislative session for time spent in getting to Juneau and establishing a household here. I was not clear about whether you also wanted to include language permitting legislators with children to claim per diem at times when legislators without children would not be entitled to make a claim.

The following new subsection would take the place of references to per diem during the 10 days before a legislative session (or the 10 days after, should the committee decide to include per diem for that time) now found throughout sections 1 and 2 of the bill. The material in triple brackets is optional. The committee can also, of course, add or delete material, depending on the policy you wish to implement.

* Sec. 3. AS 24.10.105 is amended by adding a new subsection to read:

(f) A legislator who is not living in the legislator's place of permanent residence during the session ((and who has a child or children living with the legislator during the session)) is entitled to per diem at the short-term rate during the 10 days before ((and the 10 days after)) the legislative session for the days that the legislator is

(1) traveling between Juneau and the legislator's place of permanent residence;

Representative Ulmer
Page 2
April 14, 1987

(2) setting up or concluding household arrangements for the legislative session; or

((((3) staying in Juneau to provide for the care or education of the legislator's child or children.)))

If I may be of further assistance, please advise.

TC:mkr
m11/015

A

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE HOUSE

REQUEST: _____

Bill Version : HB 220
Publish Date : 3/27/87

Revision Date: _____

Agency Affected: Legislative Affairs Agency

Title: An Act relating to legislative per diem;
and providing for an effective date.

BRU: Legislative Council

Sponsor: Rules Committee by Request

Legislative Leadership

Requestor: House State Affairs Committee

Components: Session Expenses

Legislative Leadership

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL	47.1	119.2	119.2	119.2	119.2	119.2
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	47.1	119.2	119.2	119.2	119.2	119.2

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	47.1	119.2	119.2	119.2	119.2	119.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) See Page 2

Section 1(b) & (c) would cost \$47.1 for FY 87 and \$94.2 for FY 88. These amounts are for the 10 days' per diem before a session and the 10 days' per diem after a session.

10 days x \$80 x 57 = \$45,600

\$47,100 x 2 = \$94,200

10 days x \$50 x 3 = 1,500

= \$47,100

Prepared by: Pamela A. Stoops, Manager *Pamela Stoops* Phone: 465-3850

Division: Administrative Services Date: 4/10/87

Approved by: Warren W. Endicott, Executive Director *Warren W. Endicott* Date: 4/10/87

Agency: Legislative Affairs Agency

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 220

Section 3's estimated additional cost for actual expenses for transportation, food and lodging is \$25.0.

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

M E M O R A N D U M

February 17, 1987

TO: Senator Don Bennett, Chair
Per Diem Subcommittee of Legislative Council
Senator Mitch Abood, Member

FROM: Representative Fran Ulmer

SUBJECT: Per Diem Policy

At the Legislative Council meeting last week, I reported that the Subcommittee did not have an opportunity to meet and that Senator Bennett's proposal was in the packet. The Council decided not to discuss the proposal until the Committee meets and reports its recommendation to the Council, in person.

After the Council meeting, I discussed the legal and administrative limitations on the per diem policy question. In response to my questions, I received the attached memos.

I look forward to discussing this issue with you both soon. I am ready to meet with you at your convenience.

Attachments

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1987

TO: THE HONORABLE FRAN ULMER
CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE

FROM: Pamela A. Stoops, Manager
Administrative Services

SUBJECT: Legislative Per Diem Policy

Per your request, attached is a proposed legislator per diem policy for the Legislative Council Subcommittee on Per Diem Policy.

This policy would be the easiest and most cost effective administratively for our accounting section. It also does not conflict with the statutes.

Two alternatives to the policy could be:

1. A more conservative per diem policy during session. Replace section B to state:

"B. While on state travel status approved by the President of the Senate or the Speaker of the House outside the capital city during a legislative session, a legislator is also entitled to receive per diem at the following rates:

1. Short-term rate (\$80 a day or regional variations) while on committee or other legislative business in a place that is not the legislator's place of permanent residence minus the second meal allowance (-\$31 a day).
2. Long-term rate (\$50 or \$55 a day depending on regional variations) while on committee or other legislative business at the legislator's place of permanent residence minus the second meal allowance (-\$31 a day).

As an example: An Anchorage legislator during session taking a one-day trip to Fairbanks would receive \$80 a day for session; \$90 a day for Fairbanks, minus \$31 meal allowance = \$139 total for one day."

Memorandum to: The Honorable Fran Ulmer
February 13, 1987
Page 2

2. A higher per diem policy both for session and interim on a trip-by-trip basis. Add a Section "C" to session and interim policy:

"C. Higher Per Diem Allowances

In addition, a legislator may request approval of the Speaker of the House or the President of the Senate to pay a higher allowance (consisting of actual hotel cost plus a meal allowance) on a trip-by-trip basis whenever the circumstances of travel are such that the established per diem is not adequate to obtain lodging and meals. Higher allowances will not be authorized for Anchorage, Fairbanks, and Juneau.

Actual hotel cost means it is for a single occupancy rate."

An example of how often the Department of Administration has used the higher per diem allowance in the last year is out of a total of 1,100 employees, four (4) trips have been authorized at the higher allowance. The higher per diem allowance (lodging and meal allowance) is how we paid legislators when the per diem statute was repealed in 1983. The higher per diem allowance is shown in the State Administrative Manual but is rarely used in the Executive branch.

Tam Cook, Director of Legal Services, has reviewed the attached proposed legislator per diem policy.

PAS:mm

Attachment - Proposed Legislative Per Diem Policy

PROPOSED LEGISLATOR PER DIEM POLICY

SESSION PER DIEM

Alaska State Legislators are entitled to per diem rates allowed for a state employee under AS 39.20.110 and 39.20.160, including regional variations in the rate where applicable. These regulations are adopted by the Commissioner of Administration and are uniform for all officials and employees, and all agencies and departments.

- A. During a legislative session a legislator is entitled to receive per diem at the short-term rate (\$80 a day) if Juneau is not the legislator's place of permanent residence.

During a legislative session a legislator is entitled to receive per diem at the long-term rate (\$60 a day) if Juneau is the legislator's place of permanent residence.

- B. While on state travel status approved by the President of the Senate or the Speaker of the House outside the capital city during a legislative session a legislator is also entitled to receive per diem at the following rates:
1. Short-term rate (\$80 a day or regional variations) while on committee or other legislative business in a place that is not the legislator's place of permanent residence.
 2. Long-term rate (\$50 or \$55 a day depending on regional variations) while on committee or other legislative business at the legislator's place of permanent residence.

INTERIM PER DIEM

A legislator is entitled to receive per diem while on committee business or other legislative business during the interim if he/she has the approval of the Speaker of the House or the President of the Senate. Funding sources for payment of interim per diem will be determined by the Speaker of the House or the President of the Senate. The following rates apply:

- A. Short-term rate (\$80 a day or regional variations) while on committee business or other legislative business in a place that is not the legislator's place

of permanent residence.

- B. Long-term rate (\$50 or \$55 a day depending on regional variations) while on approved committee business or other legislative business at the legislator's place of permanent residence.

RECEIVED FEB 12 1987

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3814

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 12, 1987

SUBJECT: Legislative per diem
TO: Representative Fran Ulmer
FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether it would be consistent with the statute for the Legislative Council to adopt a policy applicable to legislators which substitutes the payment of actual expenses or some other sum for the payment of the state rates of per diem. AS 24.10.105 provides:

(a) A member of the legislature is entitled to receive per diem at the same rate allowed for a state employee under AS 39.20.110 and 39.20.160, including regional variations in the rate where applicable.

(b) A legislator is entitled to receive per diem at the short-term rate

(1) during a legislative session if the legislator is not living in the legislator's place of permanent residence during the session; and

(2) while on committee business or other legislative business in a place that is not the legislator's place of permanent residence.

(c) A legislator is entitled to receive per diem at the long-term rate

(1) during a legislative session if the legislator is living in the legislator's place of permanent residence during the session; and

(2) while engaged in committee business or other legislative business at the legislator's place of permanent residence.

(d) In this section

(1) "long-term rate" means the long-term per diem rate for a state employee established in regulations adopted by the commissioner of administration under AS 39.20.160;

(2) "short-term rate" means the short-term per diem rate for a state employee established in regulations adopted by the commissioner of administration under AS 39.20.160.

The statute specifically ties the rates of per diem to the state rates and provides that a legislator is entitled to receive per diem in two situations: while the legislature is in session and when the legislator is engaged in committee or other legislative business. It is my conclusion that the Legislative Council could not properly adopt a policy that alters this statute by substituting some other sum in situations where the statutory rates of per diem apply. Such a change could be accomplished by amending the statute.

You have also asked whether it would be appropriate for the Legislative Council to adopt a policy that establishes a method of authorization for payment of per diem when the basis of the payment is committee or other legislative business. Since the notion of committee or other legislative business is so indefinite, in my opinion this would be a legitimate exercise of administrative authority needed to verify that the payment of per diem in those situations is proper. It would greatly aid the legislative fiscal officer responsible for issuing per diem vouchers in complying with AS 24.10.120 which requires "the basis for approval for payment" of all vouchers.

TBC:mkr
m8/123

LEGISLATIVE REIMBURSEMENT HISTORY

Per diem payments to Legislators during the session have been processed in three ways:

Procedure #1

Legislators not living in their place of permanent residence during a session were paid the short term per diem rate. Legislators living in their place of permanent residence during a session were paid the long term rate. Legislators were paid the appropriate rate for which they qualified. Once a month per diem certifications were turned into the Legislative Affairs Agency and per diem payments were adjusted based on the community in which a Legislator overnights. Legislators received one per diem rate per day. Legislators did not claim any per diem for any day spent on personal business.

EXAMPLE: Anchorage Legislator

<u>March</u> 31 days		
ELIGIBLE RATE IN JUNEAU		
31 days @ \$80	=	\$ 2,480
ACTUAL CERTIFICATION		
25 days in Juneau @ \$80	=	\$ 2,000
4 days in Anchorage @ \$50	=	200
2 days personal business	=	<u>0</u>
		\$ 2,200
		<u>-2,200</u>
		280

The per diem payment for the month of March would be adjusted and \$2,200 would be paid to the Legislator.

EXAMPLE: Juneau Legislator

<u>March</u> 31 days		
ELIGIBLE RATE IN JUNEAU		
31 DAYS @ \$60	=	\$ 1,860
ACTUAL CERTIFICATION		
26 days in Juneau @ \$60	=	\$ 1,560
5 days in Anchorage @ \$80	=	<u>400</u>
		\$ 1,960
		<u>-1,960</u>
		-100

The per diem payment for the month of March would be adjusted and \$1,960 would be paid to the Legislator.

Procedure #2

Legislators were paid per diem on a biweekly basis. Adjustments for travel out of Juneau were made once each month upon receipt of per diem certifications. In calculating per diem for Legislators, the Session Per Diem Certification was compared with the daily attendance chart. Legislators were paid under the assumption that they were automatically entitled to per diem each day of the session and adjustments were only necessary when additional per diem was claimed.

Out-of-Juneau Legislators:

In Juneau - Number of days x short-term Juneau rate

In community of permanent residence - Number of days x long-term rate plus number of days x short-term Juneau rate minus the meal allowance.

In community other than place of permanent residence - Number of days x short-term rate of community in which the Legislator visited plus number of days x short-term Juneau rate minus the meal allowance.

Juneau Legislators:

In Juneau - Number of days x long-term rate

In other communities - Number of days x short-term rate of community visited plus number of days at long term rate.

EXAMPLE: Anchorage Legislator

March 31 days

ELIGIBLE RATE IN JUNEAU

31 days @ \$80

= \$ 2,480

ACTUAL CERTIFICATION

27 days in Juneau @ \$80

= \$ 2,160

3 days in Anchorage

3x50=150

+3x80=240

390-93=

297

1 day in Fairbanks

1x90= 90

+1x80= 80

170-31=

139

\$ 2,596

-2,596

-116

The per diem payment for the month of March would be adjusted and \$2,596 would be paid to the Legislator.

Procedure #3

Legislators were paid per diem during the session at the appropriate rate which applied for Juneau. Legislators not residing in their place of permanent residence were paid at the short-term rate for Juneau. Juneau Legislators were paid at the long-term rate.

Legislators filled out session certification forms for the session. Any additional per diem compensation paid to legislators was paid from travel documents. Legislators did not receive additional per diem when returning to their community of permanent residence. If Legislators travelled to a place other than their community of permanent residence they received the short-term rate for that community minus the meal allowance.

Procedure #2 and Procedure #3 differ only in the amount reimbursed when a Legislator returned to their home community during a session. Procedure #2 allows an additional amount be paid for this travel. The computation used in procedure #2 to figure per diem for Legislators overnighing in a community other than their city of residence results in the same amount allowed under Procedure #3 (Short-term rate minus the meal allowance.)

Expense reimbursements to Legislators during a session were paid in the following manner.

When Legislators enacted the pay raise and eliminated the provision which permitted them to receive per diem, the Legislative Council adopted a travel reimbursement policy which allowed Legislators to be reimbursed expenses (attached.) Legislators travelling to any community other than their community of permanent residence were reimbursed according to this policy. Legislators returning to their community of permanent residence during a session were not reimbursed for any expenses beyond transportation cost.

LEGISLATIVE AFFAIRS AGENCY

TRAVEL REIMBURSEMENT POLICY

The following new travel reimbursement policy was ratified by the Legislative Council on January 19, 1984:

Legislators traveling on official legislative business may claim and be reimbursed for actual hotel and travel expenses incurred while in travel status away from their home station. Legislators in Juneau during the session are not considered to be in travel status.

In support of this new policy, the following guidelines have been established:

Lodging: Required on letterhead invoice; rate should be for single occupancy.

Meals: No receipts required. The following meal allowances will be paid for actual time in travel status.

Breakfast-----	\$ 6.00
Lunch-----	\$ 9.00
Dinner-----	\$ 16.00

Transportation: (Taxi, limousine, airplane, etc.) Receipts are required for items over \$10; for expenses under \$10 no receipt is required. State of Alaska TR's may be used to purchase airline tickets or for car rentals.

*Telephone calls and Other Incidental Costs: No reimbursement will be made, however business telephone calls will be reimbursed on an individual basis on an itemized billing if initialed by a legislator.

* Revised by Legislative Council 11/04/85

LAA/Admin Svcs
Accounting
11/4/85

H B

2 2 3



Official Business

Alaska State Legislature

House

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

STATE AFFAIRS COMMITTEE

HOUSE BILL 223

FILE CONTENTS

1. HB 223: AN ACT RELATING TO PERMANENT FUND DIVIDENDS; AND PROVIDING FOR AN EFFECTIVE DATE
2. BACKGROUND INFORMATION PROVIDED BY REPRESENTATIVE SWACKHAMMER
3. LETTER FROM KARLA FORSYTHE, ALASKA COURT SYSTEM, TO REPRESENTATIVE ULMER, DATED 4/13/87
4. LETTER FROM ATTORNEY GENERAL TO REPRESENTATIVE SWACKHAMMER, DATED 4/2/87
5. DRAFT HOUSE BILL BY REPRESENTATIVE DONLEY
6. WORK DRAFT FOR CS HB 223
7. LETTER TO REPRESENTATIVE ULMER FROM L.S. (DUSTY) RHODES, DATED 4/27/87
8. PROPOSED COMMITTEE SUBSTITUTE, WORK DRAFT 5/4/87

FISCAL NOTES

- A. ALASKA COURT SYSTEM, TRIAL COURTS: \$126,200
- B. COMMERCE AND ECONOMIC DEVELOPMENT, OCCUPATIONAL LICENSING: -0-
- C. DEPARTMENT OF REVENUE, ADMINISTRATIVE SERVICES: \$309,100
- D. DEPARTMENT OF REVENUE, PERMANENT FUND DIVIDEND: \$660,200 IN FY 89

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/27/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 5-4-87

The State Affairs Committee has considered HB 223

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

RECOMMENDS:

- replace with CS HB 223 (SA) 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):

- ² fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- ¹ zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Dave K. Doules
D.L.B. [Signature]

Terry Martin - No Rec.
Cliff Davidson no rec
Lynn Hoffman No Rec
[Signature] No Rec

[Signature]
 Chairman's signature

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (State Affairs)

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 remedies for the collection of
7 debt involving permanent fund dividends and to the
8 exemption for dividends; and providing for an effec-
9 tive date."

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

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

12 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS
13 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to
14 an individual is exempt from levy, execution, garnishment, attachment,
15 or any other remedy for the collection of debt. This exemption ap-
16 plies to an eligible individual's permanent fund dividend both before
17 and after payment is made to the individual. Notwithstanding other
18 laws, no other exemption applies to a dividend. A creditor is not
19 required to serve the individual with notice of levy under AS 09.38.-
20 080(c) and 09.38.085. A writ of execution may be served on the com-
21 missioner by certified mail under the rules of court for service of
22 a civil summons. The commissioner shall include the case name and
23 number with a dividend delivered to the court in accordance with a
24 writ of execution.

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

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

1 (1) child support obligations required by court order or
2 decision of the child support enforcement agency under AS 47.23.140 -
3 47.23.220;

4 (2) court ordered restitution under AS 12.55.045 - 12.55.-
5 051 or 12.55.100;

6 (3) a court ordered fine;

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

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

12 * Sec. 3. AS 43.23.065 is amended by adding new subsections to read:

13 (d) AS 09.38 does not apply to permanent fund dividends taken to
14 satisfy debts listed under (b) of this section.

15 (e) Before payment of part of an individual's permanent fund
16 dividend is made to a creditor under this section the commissioner
17 shall provide the individual with

18 (1) notification of the claim and amount claimed;

19 (2) a statement of the basis for the claim; and

20 (3) if applicable, identification of the case under which
21 the claim has been made, including court case name and case number.

22 * Sec. 4. AS 43.23.065(c) is repealed.

23 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
24
25
26
27
28
29

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HOUSE BILL 223

HOUSE BILL 223
INDEX

- SECTION 1: HOUSE BILL 223
- SECTION 2: SECTIONAL ANALYSIS
- SECTION 3: LEGAL OPINION
- SECTION 4: TAXABLE INCOME ISSUE
- SECTION 5: COURT FINES
- SECTION 6: APPLICATION FOR PERMANENT FUND
- SECTION 7: CURRENT STATUTES
- SECTION 8: STATE LOANS, DELINQUENCY AND DEFAULT

1 IN THE HOUSE

BY SWACKHAMMER AND LARSON

2

HOUSE BILL NO. 223

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 permanent fund dividends; and
7 providing for an effective date."

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

9 * Section 1. AS 43.23.005 is amended by adding a new subsection to
10 read:

11 ~~(d) An agency may claim all or part of the permanent fund divi-
12 dend of an individual the agency has reason to believe is eligible to
13 receive the dividend if the individual has an outstanding obligation
14 of a type listed under AS 43.23.065(b). If an agency claims all or
15 part of a dividend, the money shall be applied toward fulfillment of
16 the outstanding obligation. A claim under this subsection has prior-
17 ity over a claim under (a) or (c) of this section and priority over a
18 claim under AS 43.23.015(e). If more than one agency claims all or
19 part of a dividend, the claims have priority in the order listed under
20 AS 43.23.065(b). Before payment of all or part of an individual's
21 dividend is made to an agency, the commissioner shall provide the
22 individual with~~

23 ~~(1) notification of the claim and amount claimed;
24 (2) a statement of the basis for the claim; and
25 (3) if applicable, identification of the case under which
26 the claim has been made.~~

27 * Sec. 2. AS 43.23.015(b) is amended to read:

28 (b) The department shall prescribe and furnish an application
29 form for claiming a permanent fund dividend. The application for a

1 claim under AS 43.23.005(d) must include a statement by the agency of
2 the basis for its belief that the individual is eligible to receive
3 the dividend and a statement of the basis of the agency's claim in-
4 cluding, if applicable, identification of the case under which the
5 claim has been made. The application for a claim under AS 43.23.-
6 005(a) or (c) must contain a statement of eligibility and a certifica-
7 tion of residency in substantially the following form:

8 I certify that

9 () I am a state resident on the date of this application and I
10 have been a state resident for at least six months immediately preced-
11 ing the date of this application; or

12 () (name), the individual on whose behalf I am applying, is a
13 state resident and has been a state resident for at least six months
14 immediately preceding the date of this application.

15 I understand that a false claim of residency to obtain a
16 permanent fund dividend for myself or for another is a criminal of-
17 fense and that if convicted I will forfeit future permanent fund
18 dividends and that I must repay all permanent fund dividends that have
19 been paid to me. I understand that this penalty is in addition to any
20 criminal penalties imposed.

21 _____
22 (signature of individual, parent, guardian,
23 or other authorized representative)

24 * Sec. 3. AS 43.23.015(c) is amended to read:

25 (c) Except for claims under AS 43.23.005(d) and as provided in
26 (d) of this section or as may be provided by regulations adopted by
27 the department, an individual must personally sign the application for
28 permanent fund dividends, including the certification of residency
29 required under (b) of this section.

1 * Sec. 4. AS 43.23.015(e) is amended to read:

2 (e) Except as provided in AS 43.23.005(d), if [IF] a govern-
3 mental entity [PUBLIC AGENCY] claims a permanent fund dividend on
4 behalf of an individual, the governmental entity [PUBLIC AGENCY] shall
5 hold the dividend in trust for the individual. Money held in trust
6 under this subsection shall be invested by the commissioner in accor-
7 dance with AS 37.10.070.

8 * Sec. 5. AS 43.23.065 is amended to read:

9 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. (a)
10 Except as provided in (b) of this section, ¹⁰⁰50 percent of the annual
11 permanent fund dividend payable to an individual is exempt from levy,
12 execution, garnishment, attachment, or any other remedy for the col-
13 lection of debt. This exemption applies to an eligible individual's
14 permanent fund dividend both before and after payment is made to the
15 individual. Notwithstanding other laws, no other exemption applies to
16 a dividend. A creditor is not required to serve the individual with
17 notice of levy under AS 09.38.085. A writ of execution may be served
18 on the commissioner by a court by certified mail. The commissioner
19 shall include the case name and number with a dividend delivered to
20 the court in accordance with a writ of execution.

21 (b) An exemption is ~~not available~~ under this section for perma-
22 ~~nent fund dividends taken to satisfy~~ ^{UNDER 100 PERCENT LEVY}

23 (1) child support obligations required by court order or
24 decision of the child support enforcement agency under AS 47.23.140 -
25 47.23.220;

26 (2) court ordered restitution under AS 12.55.045 - 12.55.-
27 051 or 12.55.100;

28 (3) a court ordered fine;

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

1 (5) [(4)] a debt owed by an eligible individual to an
2 agency [OF THE STATE], unless the debt is contested and an appeal is
3 pending, or the time limit for filing an appeal has not expired.

4 (c) A claim [CLAIMS] listed in (b) of this section or a volun-
5 tary assignment of a dividend in payment or partial payment of a debt
6 listed in (b) of this section has [HAVE] priority in the order listed
7 over other claims on a permanent fund dividend.

8 * Sec. 6. AS 43.23.065 is amended by adding new subsections to read:

9 (d) AS 09.38 does not apply to permanent fund dividends taken to
10 satisfy debts under (b) of this section. Notwithstanding AS 09.35,
11 execution on a claim listed under (b) of this section is accomplished
12 by delivering a certified copy of the court order or judgment to the
13 commissioner.

14 (e) Before payment of all or part of an individual's permanent
15 fund dividend is made to a creditor under this section the commission-
16 er shall provide the individual with

- 17 (1) notification of the claim and amount claimed;
18 (2) a statement of the basis for the claim; and
19 (3) if applicable, identification of the case under which
20 the claim has been made.

21 * Sec. 7. AS 43.23.095 is amended by adding a new paragraph to read:

22 (9) "agency" means a state agency, state court, or munic-
23 ipality.

24 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITAL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1987

SUBJECT: Permanent Fund Dividends
(Work Order No. 15-0686A)

TO: Representative C. E. Swackhammer

FROM: Tamara Brandt Cook
Director
Division of Legal Services *TBC*

Here is the sectional analysis that you requested of a draft bill dealing with permanent fund dividends.

Section 1. This permits an agency to claim all or part of a dividend of an individual with an outstanding obligation of a type for which an entire dividend may be seized. These are specifically listed in AS 43.23.065(b). The money is applied toward fulfillment of the outstanding obligation. This claim has priority over other claims for a dividend and if more than one agency makes a claim for the same dividend, the claims have priority in the order listed under AS 43.23.065(b). The commissioner of revenue is required to provide an individual with notification of a claim and amount claimed, a statement of the basis for the claim, and, if applicable, identification of the case under which the claim has been made.

Section 2. An application for a claim by an agency must include a statement of the basis for the agency's belief that the individual is eligible for a dividend and, if applicable, identification of the case under which the claim has been made. The statement of eligibility is limited to claims by individuals or guardians.

Section 3. An exception is provided for agency claims to the requirement that an application be personally signed.

Section 4. An exception is provided for agency claims to the requirement that a dividend claimed by a governmental

entity on behalf of an individual be held in trust for that individual.

Section 5. A provision is added so that it is clear that the 50 percent exemption for dividends in existing law is the only exemption that applies to dividends, so that the remaining 50 percent may not be exempted under the exemption for liquid assets. A creditor seizing the non-exempt portion of the dividend is not required to serve a notice of levy. A writ of execution may be served on the commissioner of revenue by certified mail. An exemption is not available for certain debts under existing law and this draft add court ordered fines to the list. A voluntary assignment in payment of a debt of a listed type is granted the same priority as a claim of that type.

Section 6. This new material exemption debts listed under (b) from AS 09.38, which deals with exemptions in general, and requirements in AS 09.35 for executing on a claim. Execution is accomplished by delivering a certified copy of the court order or judgment to the commissioner of revenue. The commissioner provides the individual with notification of the claim and amount claimed, a statement of the basis for the claim, and, if applicable, identification of the case under which the claim has been made. A definition of "agency" is added, so the provision apply to state agencies, state courts, or municipalities.

Section 8. The Act takes effect immediately.

TBC:csh
c7/098

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 write-off of the

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

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 09.35, 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

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. F. Swackhammer
Alaska State House
File No.: 663-87-0446

April 2, 1987
Page 4

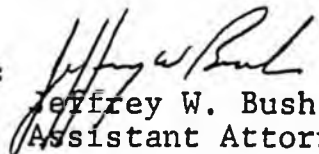
If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

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 H. Peterson, AAG
Department of Law

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 20, 1987

SUBJECT: Federal tax treatment of certain
permanent fund dividend moneys
(Work Order No. 5-0886)

TO: Representative C. E. Swackhammer

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked the following question: If a governmental agency is able to apply for and receive an individual's permanent fund dividend and then applies the dividend to payment of the individual's debts, will the agency's action result in income to the individual for federal income tax purposes despite the fact that the individual did not act to obtain the dividend?

It is not likely that the permanent fund dividend received by the agency would be characterized as income to the individual taxpayer. The individual has not taken any action to obtain the dividend, and although the money would be used for the taxpayer's debts, the taxpayer does not control when, how, or to whom it is paid.

However, a more difficult issue arises as to whether the discharge of the taxpayer's debts would be characterized as income to the taxpayer. With certain exceptions, the discharge of a debt is included in a taxpayer's gross income under 26 U.S.C. 61. The reason for the inclusion is that the taxpayer receives economic benefit from the discharge of the debts. However, because the dividend money was not claimed by the taxpayer, the governmental agency would be essentially using its own funds to pay off the taxpayer's debts. These facts suggests a donative intent on the part of the state, which would exclude the debt discharge from the gross income of the taxpayer under 26 U.S.C. 102. That section excludes gifts from gross income.

Representative Swackhammer
Page 2
March 20, 1987

There is little authority available to determine if a court would in fact characterize the discharge as a gift. Since the agency is using money that the taxpayer would have been entitled to by just applying for it, and since it is uncharacteristic for a state to "donate" money to pay private debts, the court may determine that the debt discharge is income to the individual. The final outcome of this issue is unclear.

If I may be of further assistance, please advise.

TLB:mkr
m10/027

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1987

SUBJECT: Permanent Fund Dividends
(Work Order No. 15-0686A)

TO: Representative C. E. Swackhammer

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

This draft permits in sections 1-4 an agency to claim all or part of a permanent fund dividend of an individual if the individual has an outstanding obligation of a type for which an entire dividend may be seized under AS 43.23.065(b). You have asked whether this creates legal problems. For the reasons that follow, I believe that the mechanism is subject to legal attack, but that it could be defended and might withstand attack.

For the reasons set out in Theresa Bannister's memorandum dated March 20, 1987, it cannot be determined with certainty whether the tax court would treat a dividend taken by an agency as income of the individual. If, because an individual has not taken any action to obtain the dividend and does not control when, how, or to whom it is paid, the dividend is not considered income of the individual, then the dividend remains money of the state. When that money is used in payment or partial payment of the individual's debt, this is, essentially, a gift of state money to the individual. Such a situation would be subject to question under Article IX, Section 6 which prohibits the use of public money except for a public purpose. It is hard to see how paying off an individual's debt can satisfy that requirement. This draft would be susceptible to attack under that theory.

On the otherhand, if a dividend taken by an agency to be used in payment of a debt of an individual is treated as income of that individual, then it appears that the draft could be challenged under the due process requirement of both the state and federal constitutions, because prior

Representative Swackhammer
March 23, 1987
Page 2

notice and a hearing are not provided for when an agency applies for an individual's dividend. However, due process is a flexible concept, with the individual's interest to be balanced against the state's. (Flores v. Flores, 598 P.2d 893 (Alaska 1979); Bush v. Ried, 516 P.2d 1215 (Alaska 1973)) Due process analysis involves consideration of three factors: the private interest that will be affected by the official action, the risk of erroneous deprivation and the probable value of additional procedural safeguards, and the government's interest, including fiscal and administrative burdens that additional procedures would entail. (Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980)) Applying this test, I believe that the draft might withstand a due process challenge because the only claims for which an agency may file a dividend application are those set out in AS 43.23.065(b) and each of these has involved a hearing or court order except, possibly, a claim for a debt owed to an agency, and even then a claim may not be filed if the claim is contested.

It should also be noted that a bill containing a mechanism similar to that in this draft, SCS CSHB 575 (Jud) am S, was vetoed by the governor in 1984. One of the reasons for vetoing the bill identified in the governor's message was ". . . a legal question of whether the state can, in effect, force income and a related tax liability." (Senate Journal, June 22, 1984, page 3646) Since tax law is a speciality, you might wish to have this draft reviewed by a tax attorney.

TBC:csh
c7/097



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

March 16, 1987

MEMORANDUM

TO: Representative Swack Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch *PW*
Legislative Analyst

RE: Outstanding Court Fines: Attaching Permanent Fund Dividends
Research Request 87.187

You asked for information on the collection of fees and fines levied by the Alaska Court System, and the amount of fees and fines that are presently outstanding. You were interested in the Alaska Court System's collection efforts, particularly the procedures and problems in attaching a debtor's Permanent Fund Dividend (PFD) to pay fines levied by a judicial officer.

Fees and Fines

There are no outstanding filing fees owed to the Alaska Court System because fees are always paid at the time of filing a legal document. Fees are assessed of everyone and are standard--that is, everyone pays the same amount when filing a particular document. Attorney fees could be assessed against a party in a lawsuit, but these fees would generally be payable to the other party and not to the court. However, in a criminal case, a court will appoint an attorney for those who are financially unable to obtain one, but may require that a defendant pay a portion of the attorney's fees.

A fine is a penalty, the amount of which is set on an individual basis by a judicial officer. Karla Forsythe, Staff Counsel for the Alaska Court System, said that there are no centralized records on how much is owed to the State in outstanding fines. She said that each court in the state has its own records, only some of which are computerized. In April 1986, the Court System estimated that over \$6 million was owed for outstanding fines, court appointed attorney fees, and restitution to private parties (Attachment A). Ms. Forsythe said that specific amounts outstanding in each of these categories is not available. She also said that the total amount outstanding has probably increased during the past year.

Collection Efforts

According to Ms. Forsythe, very little is done by the Court System to collect outstanding fines and attorney fees owed to the State. There is no collection agency within the judicial branch, nor does the Alaska Court System believe that the collection of outstanding balances is a judicial function. The Court System believes that collection should be done by the executive branch and has emphasized that in letters to the Attorney General's office (Attachment B). In regard to collection efforts by the Court System, Arthur Snowden, Administrative Director of the Court System, wrote "The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions."¹ According to Ms. Forsythe, the Attorney General's office has not responded to the Court System's request for executive branch action. Patrick Conheady, Assistant Attorney General, agreed that the collection of fines is an executive branch function.

Bob Fisher, Fiscal Officer for the Court System, was not aware of the collection efforts that had been made by the courts, since that information is not centralized. He suggested that I contact the clerks of the larger Alaska courts. Susan Paterson, Clerk of the Court in Fairbanks, said that over \$8,000 was collected from the assignment of PFDs by defendants with outstanding court fines. (The assignment is the voluntary signing over of an individual's right to a PFD.) David Haas, Clerk of the Court in Juneau, said that no efforts for the collection of outstanding court fines have been made by the Juneau office. I was unable to reach the clerk of the Anchorage court.

Attaching Permanent Fund Dividends

The Department of Revenue is responsible for issuing PFDs. According to Mike McGee, Chief of PFD Operations in the department, State agencies can garnish 100 percent of an individual's PFD if the individual has a debt to the State.² Child support obligations have the highest priority for garnishment. Court-ordered restitution and probation fees are second in priority and all other attachments are applied on a "first come, first served basis."³

¹Letter to Hal Brown, Attorney General, from Arthur Snowden, Administrative Director, Alaska Court System, July 17, 1985.

²Federal agencies may garnish 100 percent of an individual's PFD. All other creditors can garnish only 50 percent of an individual's PFD.

³Alaska Statutes 43.23.065 (Attachment C).

According to Mr. McGee, the garnishment of an individual's PFD is initiated by the Department of Revenue when a court order or an administrative levy is received from a State agency.⁴ An administrative levy occurs when an agency makes an administrative decision that a person has a monetary obligation to the agency. The agency presents a list of persons with obligations to the Department of Revenue and the department matches this with a list of persons receiving PFDs. The dividends of persons with obligations to State agencies are then garnished. For example, the Child Support Enforcement Division of the Department of Revenue routinely uses administrative levies to garnish PFDs of persons who are found to be delinquent in child support payments.

Individuals who do not apply for PFDs have no claim to a dividend and therefore, a State agency to which individuals owe money cannot garnish their PFDs. Mr. McGee said that for a garnishment to occur, a name must match **exactly** the name under which a person applied for a PFD. If the agency sends a name for garnishment that does not have a match in the PFD listing, the PFD will not be garnished.

Ms. Forsythe and Susan Miller, Manager of Special Projects at the Alaska Court System, said that there are several reasons that the Court System has not been more aggressive in garnishing PFDs for the payment of outstanding fines.⁵

Responsibility for Collection. The Court System maintains that the collection of fines is a function of the executive branch and not the judicial system.

Court Authority for Garnishment. According to Ms. Miller, because no statute gives a judicial officer specific authority to garnish an individual's PFD, some judges do not believe that they have the authority to do so. Each judge in the Court System makes his/her own decision regarding the limits of his/her authority if there is no specific legal guideline. Ms. Miller said that it was her opinion that under the common law, courts have the authority to use civil execution procedures to collect fines. Ms. Forsythe said that the legislature could set clear authority for the courts to attach PFDs.

⁴For the purposes of this memorandum, "attaching" and "garnishing" are used interchangeably.

⁵Conference Call, Karla Forsythe and Susan Miller of the Alaska Court System, March 11, 1987.

Attaching Property for the Collection of Criminal Fines. Several attorneys with the Court System with whom I spoke mentioned that they were not sure about the legality of attaching property for outstanding fines levied in a criminal case.⁶ Attaching property has always been associated with civil judgments and imprisonment has been associated with criminal judgments. Patrick Conheady, with the Department of Law, however, believes that AS 12.55.025 (f) establishes clear authority for the garnishing of a defendant's PFD for the payment of an outstanding fine. This statute states that "...a sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action." (Attachment E).

The Civil Execution Process is available for individuals and State agencies who have won a civil judgment against an individual and are attempting to attach property as payment. Alaska courts are required to adhere to the same process as individuals to attach a person's property.⁷ According to Ms. Forsythe, the civil execution process--AS 09.35 and AS 09.33--provides protection to debtors by providing notice and substantial time frame requirements so that debtors are assured notice and time to respond to attachment.

While protecting the debtor, this process would require paperwork, time and manpower of the courts. Many courts do not have the staff or the time to engage in the process. Ms. Forsythe said that the legislature could address this by allowing the court to pursue the attachment of an individual's PFD in an abbreviated process. She suggests that attachment could be as simple as notice to the debtor in the form of a letter. Ms. Forsythe also said that the Court System has been looking into the possibility of using the relatively simple administrative levy process to garnish PFDs, rather than the complex civil execution process.

Exemptions to the Attachment of Property are included in the civil execution process and are available to debtors. According to Ms. Forsythe, there has been confusion over whether the exemption of liquid assets in AS 09.38.030(b) (Attachment F), applies to PFDs or not. This exemption allows an individual to retain cash and other liquid assets of at least \$700 per month. Thus, an individual's PFD could be exempt from attachment if this statute applies.

⁶Susan Patterson, Clerk of the Court in Fairbanks, said that some people believe that AS 12.55.051 limits the penalty for the nonpayment of outstanding court fines to imprisonment (Attachment D).

⁷This process is detailed in Attachment G, "Execution Procedure for Judgment Creditors", Alaska Court System Handbook, July 1986, pp. 10 - 16.

CORRECTION

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

Attaching Property for the Collection of Criminal Fines. Several attorneys with the Court System with whom I spoke mentioned that they were not sure about the legality of attaching property for outstanding fines levied in a criminal case.⁶ Attaching property has always been associated with civil judgments and imprisonment has been associated with criminal judgments. Patrick Conheady, with the Department of Law, however, believes that AS 12.55.025 (f) establishes clear authority for the garnishing of a defendant's PFD for the payment of an outstanding fine. This statute states that "...a sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action." (Attachment E).

The Civil Execution Process is available for individuals and State agencies who have won a civil judgment against an individual and are attempting to attach property as payment. Alaska courts are required to adhere to the same process as individuals to attach a person's property.⁷ According to Ms. Forsythe, the civil execution process--AS 09.35 and AS 09.38--provides protection to debtors by providing notice and substantial time frame requirements so that debtors are assured notice and time to respond to attachment.

While protecting the debtor, this process would require paperwork, time and manpower of the courts. Many courts do not have the staff or the time to engage in the process. Ms. Forsythe said that the legislature could address this by allowing the court to pursue the attachment of an individual's PFD in an abbreviated process. She suggests that attachment could be as simple as notice to the debtor in the form of a letter. Ms. Forsythe also said that the Court System has been looking into the possibility of using the relatively simple administrative levy process to garnish PFDs, rather than the complex civil execution process.

Exemptions to the Attachment of Property are included in the civil execution process and are available to debtors. According to Ms. Forsythe, there has been confusion over whether the exemption of liquid assets in AS 09.38.030(b) (Attachment F), applies to PFDs or not. This exemption allows an individual to retain cash and other liquid assets of at least \$700 per month. Thus, an individual's PFD could be exempt from attachment if this statute applies.

⁶Susan Patterson, Clerk of the Court in Fairbanks, said that some people believe that AS 12.55.051 limits the penalty for the nonpayment of outstanding court fines to imprisonment (Attachment D).

⁷This process is detailed in Attachment G, "Execution Procedure for Judgment Creditors", Alaska Court System Handbook, July 1986, pp. 10 - 16.

Ms. Forsythe said that some people argue that AS 09.38.030(b) does not apply to PFDs because AS 43.23.065 (Attachment C) provides the only statutory exemption for the attachment of PFDs.⁸ Alaska Statute 43.23.065 exempts one-half of a person's PFD from attachment except for child support, court-ordered restitution, and debts owed to State agencies. An outstanding fine is considered a debt to the State and, in that situation, an individual's PFD would not be included in the partial exemption provided by AS 43.23.065.⁹

* * *

I hope this information is useful to you. If you would like us to research the collection of court fines in other states, we would be happy to do so. If you have any questions or would like additional information, please contact our agency.

Attachment

⁸This statute is not a part of the civil execution process.

⁹Ms. Forsythe said that the legislature could aid the Court System in the collection of PFDs for outstanding fines by clarifying these statutes. She suggested legislation which states that the liquid assets exemption in AS 09.38.030(b) does not apply to PFDs, and a clarification as to whether or not AS 43.23.065 is the sole statutory exemption relating to PFDs.

ATTACHMENT A
Letter from Arthur Snowden to Attorney General Brown
April 3, 1986



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE ALASKA
99501

April 3, 1986

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274 8611

Harold M. Brown, Attorney General
Department of Law
P. O. Box K
Juneau AK 99811

Dear Hal:

Although I have not yet received your response to my July 17, 1985 letter requesting that the Department of Law assume its statutory responsibility for collection of monies due to the state on court judgments, I have asked each judicial district to compile case history information about monies due.

Each judicial district was recently asked to provide my office with a statement of all outstanding amounts due to the state from court orders for fines and payment for court-appointed attorneys, and for restitution due to private parties. Preliminary figures for the total of these three categories are as follows:

- First district - \$1.5 million
- Second district - \$ 23,500
- Third district - \$3.4 million
- Fourth district - \$1.1 million

The accounting information received in my office must be checked against actual court records before we can assure accuracy in each individual case. We are prepared to pull files and verify amounts due in each case we will be turning over to your office for collection. Please let me know your plans in this regard, so that I can plan for an orderly reporting process.

Thank you for your help and cooperation. Please contact me if you have any questions.

Sincerely,

Arthur H. Snowden, II
Administrative Director

- cc: Chief Justice Rabinowitz
Presiding Judges
Area Court Administrators
Stephanie Cole
Karla Forsythe
Bob Fisher

ATTACHMENT B
Letter from Arthur Snowden to Attonery General Brown
July 17, 1985
and to Attorney General Schaible
February 18, 1987



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR W. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

July 17, 1985

Hal Brown
Attorney General
Pouch K
Juneau AK 99811

Dear Hal:

At the request of former Commissioner of Administration Lisa Rudd, the administrative office of the Alaska Court System is reviewing indigency guidelines. One area of concern is the current lack of effort by the Department of Law to collect from defendants the costs of representation which the court has ordered them to pay.

Under AS 18.85.120, persons receiving services of court-appointed counsel shall affirm their indigency and execute waivers authorizing release of income information. At the conclusion of all services by the public defender, the court shall upon request release all non-incriminating information to the attorney general. Under AS 18.85.150, the attorney general may then bring an action on behalf of the state to recover payment.

It is my understanding that the Department of Law is undertaking no effort at the present time to recoup the state's expenses in these cases. Although trial courts from time to time have engaged in preliminary collection efforts such as sending reminder letters to defendants, collection of costs is an executive branch function. The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions (see Public Defender Agency v. Superior Court Third Judicial District, 534 P.2d 947 (1975)).

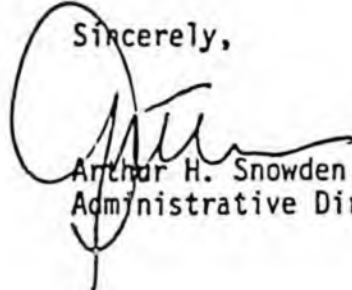
I recognize that collection efforts, including litigation, are not cost effective unless the court has ordered repayment of a substantial sum of money for which there is a realistic change of repayment. Approximately \$277,000 in court-ordered costs are outstanding in Anchorage alone for 1984 with over 5400 Anchorage cases since 1979 in which uncollected costs are outstanding.

July 17, 1985
Page 2

I propose that the Department of Law assume its statutory responsibility for collection in these cases, and that the Department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected.

I would appreciate it if you could review the possibility of entering into such an agreement, and let me know your views.

Sincerely,



Arthur H. Snowden, II
Administrative Director

KF/k1

cc: Stephanie Cole
Karla Forsythe



RECEIVED
FEB 19 1987

Office of Administrative Director
Alaska Court System

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 18, 1987

Grace Berg Schaible
Attorney General
Department of Law
P. O. Box K
Juneau, Alaska 99811

Dear Ms. Schaible:

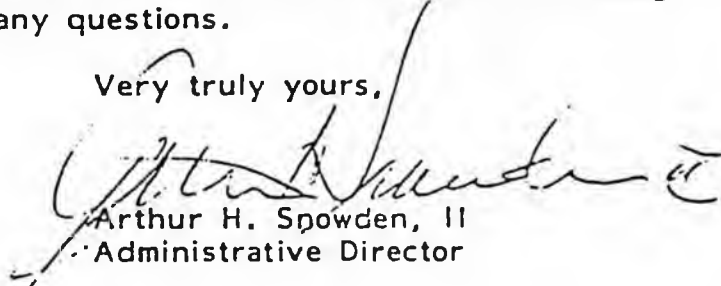
On a number of occasions, I wrote and talked to former Attorney General Hal Brown about the problem of collection of monies due to the State of Alaska. With regard to the court system, these monies consist of amounts due for unpaid fines and payments for court-appointed attorneys.

Although Mr. Brown did not appear to dispute the propriety of the Department of Law making such a collection effort, he was emphatic that he lacked the manpower resources to mount such an effort. I have noted the proposed budget cuts that your department is likely to suffer in the upcoming fiscal year, and it is easy to see that even fewer resources will be available for such secondary functions as debt collection.

However, I have in the past suggested that the state consider contracting, on a "percentage collected" basis, with a private sector collection agency to attempt to collect monies for all debts owed the state.

I hope that we can discuss this issue at the next Criminal Justice Working Group. Please contact me if you have any questions.

Very truly yours,


Arthur H. Snowden, II
Administrative Director

AHS:bs

cc: Stephanie J. Cole, Deputy Administrative Director
Karla L. Forsythe, Staff Counsel



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

July 8, 1986

Hal Brown
Attorney General
Pouch K
Juneau, AK 99811

Dear Mr. Brown:

On July 17, 1985, Art Snowden wrote to you proposing that the Department of Law assume its statutory responsibility for collecting fines, and, further, that the department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected. On April 3, 1986, Mr. Snowden forwarded preliminary figures for outstanding fines and restitution, indicating a state-wide total of over \$6 million (copies of letters attached). To date, the department has not forwarded a response.

The court system again requests that you look into this matter, and advise Mr. Snowden of your plans.

Sincerely,

Karla L. Forsythe
General Counsel

cc: Arthur H. Snowden, II
Stephanie Cole

ATTACHMENT C
ALASKA STATUTE SUPPLEMENT 43.23.065

provision, see § 22, ch. 99, SLA 1985 in the Temporary and Special Acts.
 Effect of amendments. — The 1984

amendment substituted "October" for "December" in paragraph (2).

Sec. 43.23.065. Exemption of permanent fund dividends. (a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

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

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

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

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220, (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS

12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section"

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash"

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that

ATTACHMENT D
Code of Criminal Procedure 12.55.051

Ct. App. 2d 1320

il after pealed,

endant section nt and unt the den its

ay civil

y grant of time ch 102

ction (f), s Act do uction of mmitted ct or the defense n offense cording the com-manner

— For S CSSB Supple- or 1980 79, (May

sets. — ment to restitu- ng and Ct. App. 2d 1359

loss to charged evidence enter of id on the

actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Amount of restitution held proper. — The trial court did not err in ordering \$300,000 restitution upon conviction of embezzlement by an employee and theft in the first degree even though it would be impossible for the defendant to pay such a large amount, due to the difficulty in predicting at that point what amount of restitution was reasonable for defendant to pay. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes specific method for dealing with

enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Quoted in *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Stated in *Dorris v. State*, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]

Sec. 12.55.051. Enforcement of fines and restitution. (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

ATTACHMENT E
Code of Criminal Procedure 12.55.025

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court. (§ 1 ch 154 SLA 1984)

Cross references. — For effect of this SLA 1984 in the Temporary and Special section on Cr. R. 32(d)(2), see § 12, ch 15-1, Acts.

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report which includes the following:

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed;
- (4) any recommendations as to the place of confinement or the manner of treatment; and
- (5) in the case of a conviction for a felony offense, information assessing
 - (A) the financial, emotional, and medical effects of the offense on the victim;
 - (B) the need of the victim for restitution; and
 - (C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) Except as provided in (g) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment.

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) If the defendant has been convicted of two or more crimes before the judgment on either has been entered, any sentences of imprisonment may run concurrently if

- (1) the crimes violate similar societal interests;
- (2) the crimes are part of a single, continuous criminal episode;
- (3) there was not a substantial change in the objective of the criminal episode, including a change in the parties to the crime, the property or type of property right offended, or the persons offended;
- (4) the crimes were not committed while the defendant attempted to escape or avoid detection or apprehension after the commission of another crime;
- (5) the sentence is not for a violation of AS 11.41.100 — 11.41.470; or
- (6) the sentence is not for a violation of AS 11.41.500 — 11.41.530 that results in physical injury or serious physical injury as those terms are defined in AS 11.81.900. (§ 12 ch 166 SLA 1978; §§ 7, 8 ch 131 SLA 1980; am §§ 24, 25 ch 143 SLA 1982; am E.O. No. 55, §§ 6, 7 (1984); am § 2 ch 154 SLA 1984)

Revisor's notes. — AS 12.55.025(e) was amended by § 24, ch 143, SLA 1982 and purportedly repealed by § 42, ch 143, SLA 1982. The repeal in § 42 was apparently a drafting error. See House Journal Supplement No. 69, dated June 1, 1982, page 18.

Effect of amendments. — The 1980 amendment substituted "90" for "180" following "exceeding" near the beginning of subsection (a), inserted "or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010"

following "days" near the middle of subsection (a), and rewrote subsection (b).

Sections 24 and 25, ch 143, SLA 1982, rewrote subsection (e) and added subsection (g).

The first 1984 amendment substituted "Department of Corrections" for "division of corrections" in subsection (b) and "Corrections" for "Health and Social Services" in the second sentence in subsection (d).

The second 1984 amendment, in subsection (a), inserted "for conviction of a felony offense or a sentence" in the introductory paragraph, added "any" to the beginning

ATTACHMENT F
Chapter 38, Alaska Exemptions Act

Chapter 38. Alaska Exemptions Act.

Section	Section
10 Homestead exemption	75. Special procedures relating to limited value exemptions
15 Property exempt without limitation	80. Procedures applicable to a levy on property of an individual
20 Exemptions of personal property subject to value limitations	85 Contents of notice
25 Exemption of unmatured life insurance and annuity contracts	90 Assertion of rights by another
30 Exemption of earnings and liquid assets	95 Judicial relief
35 Continuing lien on wages	100 Debtor's property owned with another
40 Priorities between continuing liens	105 Waiver of exemption
45 Effective date of continuing lien	110 Federal requirements
50 Increased exemption amount	115 Adjustment of dollar amounts
55 Bankruptcy proceedings	120 Protection of property of residents and nonresidents
60 Tracing exempt property	500 Definitions
65 Claims enforceable against exempt property	510 Short title
70 Limitation on enforcement of certain security interests in exempt goods	

Revisor's notes. — Several sections in this chapter were redrafted in 1982 to remove personal pronouns in conformity with AS 01.05.031(c).

Cross references. — For general provisions concerning execution, see AS 09.35 and Civ. R. 69, for legislative intent, see 1 ch 62 SLA 1982, for transition provisions, see 1 ch 62 SLA 1982.

Collateral references. — 31 Am Jur 2d, Exemptions, § 1 et seq.

35 C.J.S., Exemptions, § 1 et seq.
 Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors, 11 ALR3d 1465

Family allowance from decedent's estate

as exempt from attachment, garnishment, execution, and foreclosure, 27 ALR3d 863

What is "necessary" furniture entitled to exemption from seizure for debt, 41 ALR3d 607

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property, 85 ALR3d 911.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711

Choice of law as to exemption of property from execution, 100 ALR3d 1235

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of that individual or the dependents of that individual, but the value of the homestead exemption may not exceed \$27,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$27,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each

individual owner may not exceed that individual owner's pro rata portion of \$27,000.

(c) If property that includes a homestead is sold under an execution the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and then balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (5 2 ch 62 SLA 1982)

Cross references. — For provisions value specified under subsection (b) of this section, see AS 34.16.14(b).
 exempting homestead held by tenants by the entirety from execution on debts to the

NOTES TO DECISIONS

Prior law. — For cases construing former statutes, see Seagreen v. Wendler, 5 Alaska 715 (1917), Wendler v. Breneman, 7 Alaska 13 (1923), Williams v. Thompson, 7 Alaska 601 (1927), Irre

Bocash, 10 Alaska 206 (1942), Dalton Interior Credit Bureau, Inc., Sup Ct C No 2158 (File No 4265), 615 P 2d 6 (1980).

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction.

(or compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

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

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Housing Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — For the applicability of the exemptions from execution in income assignment orders for child support, see AS 09 65 132(k); for provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14 25 200; for provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23 20 405(e); for provisions exempting workers' compensation benefits from levy

to enforce the collection of a debt, see AS 23 30 160(b); for provisions exempting amounts held in the public employee pension fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39 35 600(b); for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47 45 120(b); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47 23 250

NOTES TO DECISIONS

Legislative intent as to liquor licenses. — Former AS 09 35 087 (see now 09 35 087) of this section indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. *C.V. Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Uniform Commercial Code (AS 45.09). — See *Gibson v. Alaska ABC Bd.*, 377 F. Supp. 151 (D. Alaska 1974), decided under former AS 09 35 087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975), decided under former AS 09 35 080.

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$1,500 chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

dependent, books and musical instruments; and:

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$500 in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$1,400 aggregate value, of implements, professional books, and tools of trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$500.

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$1,500 if the full value of the motor vehicle does not exceed \$10,000. (§ 2 ch 62 SLA 1982)

NOTES TO DECISIONS

Editor's notes. — *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09 35 080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Exemption statute should not be interpreted in a way which completely eliminates a debtor's exemption rights in an item of property within an exempt category because that item's value exceeds the statutory allowance. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No.

3996), 597 P.2d 969 (1979).

Purpose of personal and household property exemptions. — Personal and household property exemptions are designed to ensure that debtors will have necessary items for living in reasonable comfort and for earning a living. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

The proceeds of exempt property are exempt to the debtor for a reasonable time, to enable him to invest the money in other exempt property. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts. (a) Except as provided in this section, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than \$5,000, a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of \$5,000 or the amount of the creditor's claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided for